

DANIEL HOPKINS, )  
 )  
 Plaintiff, ) CASE NO. C18-01723-MJP  
 )  
 v. ) Seattle, Washington  
 )  
 ) October 14, 2020  
 ) 9:00 a.m.  
 )  
 INTEGON GENERAL INSURANCE ) JURY TRIAL via ZOOM  
 CORPORATION, )  
 )  
 Defendant. ) Volume 7 of 7  
 )  
 )

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PROCEEDINGS

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THE FOLLOWING PROCEEDINGS WERE HELD  
OUTSIDE THE PRESENCE OF THE JURY:

THE COURT: We have some things to do this morning. First of all, Mr. Harris has plenty of time to deliver his closing arguments. You, Mr. Wampold, have 102 minutes left. You asked for 105. I am graciously offering you the three minutes. Don't ever say I didn't ever do anything for you.

MR. WAMPOLD: Exactly. I'll remember it forever.

THE COURT: You should have received a copy of the jury instructions that had some reworking done on them, and so I hope you've all had an opportunity to go through those.

It would be my plan for you to take exceptions this morning; put your arguments on the record. If there is any corrections that need to be done, Ms. Pernell is here. After we have our final set ready to go, we will be emailing them to our jurors, and Mr. Cogswell will be taking the verdict form and putting it into a fillable PDF so everyone can use it at the time they go to deliberate.

So who is going to be taking exceptions for the plaintiffs?

MR. WAMPOLD: I will, Your Honor.

INSTRUCTION EXCEPTIONS

THE COURT: Okay. Mr. Wampold, first I'd like your exceptions to what it is that I have given, and then exceptions

1 to what I have not given.

2 MR. WAMPOLD: I'm not taking any exceptions to what  
3 you have given.

4 THE COURT: Then exceptions to what I have not given.

5 MR. WAMPOLD: I'm going to take exception to not  
6 having given our Instruction No. 8, which is based on the  
7 *Morella* case, and it's the one that states that -- where an  
8 insurer offers to pay a paltry amount not in line with the  
9 losses, that -- that that is a denial of benefits, and we think  
10 that should be given to create clarity about what happens in the  
11 context of a low-ball offer.

12 Do you want me to go on to the next one?

13 THE COURT: No.

14 I'll just, basically, say I understand your objection. The  
15 instruction offered is not a standard instruction that's taken  
16 from case law, and you are certainly free to argue that  
17 position, but I don't believe it's necessary to state that in  
18 this case.

19 MR. WAMPOLD: Okay. Great. Thank you, Your Honor.

20 And the only other exception, and this is, really, just for  
21 our record, and that is excepting to the failure to give  
22 Instruction No. 24, which would have instructed the jury on the  
23 enhancement of damages. And I know Your Honor has ruled that  
24 that's for the court, but we're just preserving our record and  
25 excepting to not having given that to the jury.

1 THE COURT: All right. And I take it that there are  
2 no exceptions to the verdict form as well.

3 MR. WAMPOLD: There are no exceptions to the verdict  
4 form, that's correct. Thank you.

5 THE COURT: Mr. Harris?

6 MR. HARRIS: Thank you, Your Honor.

7 In terms of the instructions that are given, we take  
8 exception to No. 23, which talks about the equal-consideration  
9 standard, and that's one that we've discussed previously on  
10 multiple occasions.

11 So for those reasons we've discussed previously, we don't  
12 think that's an accurate statement of the law with respect to  
13 the UIM. I understand the court has ruled already, but we take  
14 exception to that one.

15 The damages instruction, there's indication here about loss  
16 or diminished assets or property in the value of money. I don't  
17 think we've heard any testimony about the value of money. I  
18 don't think that that's been establish by the evidence in this  
19 case, so I don't think that that is an appropriate instruction.

20 As to the Insurance Fair Conduct Act, the bad faith, and  
21 the --

22 THE COURT: Slow down, Mr. Harris. Let's make a  
23 record here.

24 What you're talking to me about Instruction No. 30?

25 MR. HARRIS: Correct.

1 THE COURT: And we're talking about is the paragraph  
2 that concerns the Consumer Protection Act, or --

3 MR. HARRIS: No, Your Honor --

4 THE COURT: -- oh, I'm sorry. The Insurance Fair  
5 Conduct Act.

6 MR. HARRIS: Yes. This is on page 2 of Instruction 30.  
7 There's an instruction regarding loss or diminished assets or  
8 property and the value of money. I don't think we've received  
9 testimony about how the jury is going to calculate that, about  
10 whether he's lost the value of money. So I don't think there's  
11 been testimony to support those instructions in this case.

12 THE COURT: Mr. Wampold, we haven't had any  
13 discounting-to-present-value testimony.

14 MR. WAMPOLD: No. It's just the loss of money; I  
15 mean, the fact that he didn't have that money. The \$16,000 on  
16 Strzelec is clear, and the \$931 he had to pay out of pocket  
17 because he didn't have the money.

18 THE COURT: But the jury doesn't have any instruction  
19 as to the value of money. In other words, is the money the same  
20 in 2016 as it is in 2020.

21 MR. WAMPOLD: Yeah, I guess I don't think, in light of  
22 what we're talking about, that that's a necessary instruction.

23 THE COURT: Okay. Mr. Harris, I'll take that out. I  
24 think you 're correct that there's no -- we don't have any  
25 testimony about it. It would be sheer guesswork as to the value

1 of money, if it's changed over that period of time.

2 So, Ms. Pernell, before this goes out, we will exclude that  
3 phrase, "including the value of money," on Instruction 30.

4 MR. HARRIS: That would be for all three of the tort  
5 claims, Your Honor, the IFCA, the bad faith, and the negligence.

6 THE COURT: Yes, for all three.

7 MR. HARRIS: All right. And then in terms of  
8 instructions that were not given, I'm just going to repeat our  
9 discussion from yesterday in terms of the proposed instructions  
10 we provided regarding duplication.

11 We submitted a separate instruction. We thought that would  
12 be appropriate to have a separate instruction rather than where  
13 it's indicated in the damage instruction. Here at the end, the  
14 very, very last sentence of Instruction No. 30 does talk about  
15 it, but I think it should be set out and made more clear to the  
16 jury. I don't think the jury instructions, as they're worded,  
17 clearly indicates that they cannot duplicate damages for  
18 multiple claims.

19 THE COURT: It is contained in Instruction 30, and it  
20 is also an explicit instruction in the verdict form as well. So  
21 you think it should be there a third time?

22 MR. HARRIS: We think it should be set out and set out  
23 separately so that it's made clear to the jury.

24 THE COURT: Well, Mr. Harris, I think it would pass  
25 muster if we had one continuous instruction rather than several

1 small ones, so I think that's a distinction without a  
2 difference.

3 MR. HARRIS: Okay.

4 And the last instruction that was not given that we talked  
5 about previously is the one about the redactions, Your Honor. I  
6 understand the court's position on that, but I wanted to note  
7 that exception for the record.

8 THE COURT: Okay. All right. Anything further,  
9 Mr. Harris?

10 MR. HARRIS: No, Your Honor.

11 THE COURT: Okay. Well, then, Ms. Pernell, did you  
12 put on your speaker so you can speak to me?

13 THE LAW CLERK: Yes, I did. Can you hear me?

14 THE COURT: Yes, I can.

15 I want you to make those changes to Instruction 30, taking  
16 out those phrases. And then let's push these out to our jurors,  
17 so that they have a copy, in an email. When you push it out to  
18 them, you should indicate to them that they should delete the  
19 preliminary instructions, and it is the court's final  
20 instructions to the jury that will govern.

21 THE LAW CLERK: Okay.

22 THE COURT: Okay. Mr. Wampold, are you all set up?  
23 Are you going to be using bullet points and that sort of thing?

24 MR. WAMPOLD: Yeah, I'll be using PowerPoint. And I'm  
25 just -- I will be all set up. We're making a couple last-minute



1 changes, based on the court's ruling on those damages slides, so  
2 we just have to make a few changes, and then I'll be ready.

3 THE COURT: Mr. Harris, you're ready to go as well?

4 MR. HARRIS: Yes, Your Honor, we're ready to go.

5 THE COURT: Mr. Wampold, if you're going to go for 75  
6 minutes, I'm going to let them have a break after about a half  
7 an hour.

8 MR. WAMPOLD: Okay.

9 THE COURT: So I'll let you either decide when to do  
10 that, when you come to a break, or if you keep going past 30  
11 minutes, I will find a break for you.

12 MR. WAMPOLD: Okay. Sounds good.

13 So what time, approximately, do you want to take the break,  
14 do you think?

15 THE COURT: Well, depending on how long it takes me to  
16 read the instructions. I'd kind of like to take a 15-minute  
17 break in between your argument and Mr. Harris's.

18 MR. WAMPOLD: I thought you wanted a break?

19 THE COURT: Just a stand-up break. You can work that  
20 into your presentation.

21 Same for you, Mr. Harris. We can't go for an hour just  
22 with the talking heads.

23 MR. WAMPOLD: Right.

24 THE COURT: I know you're both more interesting than  
25 that, but you want them to stay awake.

1 MR. WAMPOLD: Yeah, I understand. Thank you.

2 THE COURT: All right. Then we have about 20 minutes  
3 before we -- unless we have our jurors already reporting in.  
4 Mr. Cogswell?

5 THE CLERK: We do not, Your Honor.

6 THE COURT: Okay. Then I'm going to blank myself out  
7 and do some other things. You can as well, and we'll be back,  
8 ready to go, promptly at nine o'clock.

9 MR. WAMPOLD: Sounds good, Your Honor. Thank you.

10 THE COURT: Okay.

11 (Court in recess 8:41 a.m. to 9:03 a.m.)

12 THE COURT: Mr. Harris, you didn't get a chance to  
13 rest in front of the jury yesterday, so after I greet them, I'll  
14 give you the chance to do that. I'll then ask Mr. Wampold if  
15 there's any rebuttal; he'll say "no," and then we can go right  
16 into jury instructions.

17 Let's bring them in.

18 THE FOLLOWING PROCEEDINGS WERE HELD  
19 IN THE PRESENCE OF THE JURY:

20 THE COURT: Good morning. Would you all unmute for  
21 me, please? Okay. Everybody is ready to go to work this  
22 morning?

23 JUROR: Yes.

24 THE COURT: Okay. One of the first things that's  
25 going to happen this morning is, I want you to delete the

1 previous jury instructions I gave you, and you should have all  
2 received a copy of the jury instructions, but first we have some  
3 formal proceedings to take care of in front of you.

4 So I'm going to turn to Mr. Harris. If I can have you all  
5 mute again.

6 Mr. Harris, does the defense have any further witnesses?

7 MR. HARRIS: No, Your Honor. The defense rests.

8 THE COURT: Mr. Wampold, the defense rests. Is there  
9 any rebuttal?

10 MR. WAMPOLD: There is no rebuttal, Your Honor.

11 THE COURT: Okay.

12 Ladies and gentlemen, I'm going to ask for your kind  
13 attention as I read to you the court's final instructions. You  
14 can follow along with me, because they're going to be up on the  
15 screen, and it's entirely up to you as to how you learn best.  
16 If you learn by listening, it's fine for you to just listen. If  
17 you learn by reading along, then please follow along with me.

18 These are the court's instructions to the jury.

19 COURT'S INSTRUCTIONS

20 THE COURT: Members of the jury, now that you've heard  
21 all the evidence, it is my duty to instruct you on the law that  
22 applies to this case. It is this final set of instructions that  
23 controls your consideration. It is your duty to weigh and to  
24 evaluate all the evidence received in the case, and in that  
25 process, to decide the facts. It is also your duty to apply the

1 law, as I give it to you, to the facts as you find them.  
2 Whether you agree with the law or not, you must decide the case  
3 solely on the evidence and the law and must not be influenced by  
4 any personal likes or dislikes, opinions, prejudices, or  
5 sympathy. You'll recall that you took an oath promising to do  
6 so at the beginning of the case.

7 You must follow all of these instructions and not single  
8 out some and ignore others. They are all important. You must  
9 not make any assumptions based upon any changes from the  
10 preliminary set of instructions. It is the final set that you  
11 are governed by. Please do not read into these instructions, or  
12 anything I may have said or done, any suggestion as to what  
13 verdict you should return. That is a matter entirely up to you.

14 Number 2: To help you follow the evidence, I will give you  
15 a brief summary of the positions of the parties. This is a  
16 civil case brought against defendant Integon General Insurance  
17 Company. The plaintiff is Daniel Hopkins. On April 23rd, 2016,  
18 plaintiff Daniel Hopkins and his wife Irene were stopped behind  
19 a pedestrian crosswalk on Northwest 85th Street in Seattle,  
20 Washington, when they were hit from behind by another driver.

21 The driver who caused the crash was underinsured at the  
22 time of the collision. Plaintiff Hopkins is an insured under  
23 the underinsured motorist UIM policy with the defendant Integon  
24 Insurance Corporation.

25 Because the driver who caused the crash was underinsured,

1 plaintiff Hopkins has a claim for the insurance benefits against  
2 defendant Integon, his insurer for this claim.

3 Plaintiff Hopkins makes the following five claims against  
4 the defendant, Integon: One, for insurance benefits; two, for  
5 violation of the Consumer Protection Act; three, for violation  
6 of the Insurance Fair Conduct Act; four, for violation of the  
7 insurance duty of good faith; and five, for negligently handling  
8 Mr. Hopkins' UIM claim.

9 Plaintiff Daniel Hopkins claims that as a result of  
10 defendant Integon General Insurance Corporation's conduct, he  
11 suffered damages. You'll be asked to determine the value of  
12 each of these claims.

13 Defendant Integon General Insurance Corporation disputes  
14 the amounts of benefits requested, and denies each and every one  
15 of plaintiff Hopkins' claim.

16 Instruction 3: During deliberations, you will have to make  
17 your decision based on what you recall of the evidence. You  
18 will not have a transcript of the trial. I urge you to pay  
19 close attention to the testimony as it is given. If at any time  
20 you cannot hear or see the testimony, evidence, questions, or  
21 arguments, let me know so that I can correct the problem.

22 Number 4: Those exhibits received in evidence that are  
23 capable of being displayed electronically by using the Box  
24 platform will be provided to you in that form, and you'll be  
25 able to view them in the jury room. The court technician will

1 show you how to use the Box platform and how to locate and view  
2 exhibits on your device. If you have any questions about how to  
3 operate the Box platform, you may send a note through the chat  
4 function of ZoomGov to the courtroom deputy. Do not refer to or  
5 discuss any exhibit you were attempting to view.

6 If a technical problem or question requires hands-on  
7 maintenance or instruction, the court technician may enter the  
8 jury room, with the courtroom deputy present for the sole  
9 purpose of assuring that the only matter that is discussed is a  
10 technical problem. When a court technician or any non-juror is  
11 in the jury room, the jury shall not deliberate. No juror may  
12 say anything to the court technician or any non-juror, other  
13 than to describe the technical problem or seek information about  
14 the operation of the equipment. Do not discuss any exhibit or  
15 any aspect of the case.

16 The sole purpose of providing the Box platform in the jury  
17 room is to enable jurors to view the exhibits received in  
18 evidence in this case. You may not use the platform or your  
19 devices for any other purpose; for example, any website,  
20 database, directory, dictionary, or game.

21 If you discover that the computer provides or allows access  
22 to such materials, you must inform the court immediately, and  
23 refrain from viewing such materials. Do not remove the computer  
24 or any electronic data from the jury room, and do not copy any  
25 such data.

1           Number 5: You had permission to take notes to help you  
2     remember the evidence. If you took notes, please keep them to  
3     yourself until you and your fellow jurors go to the jury room to  
4     decide the case. When you leave, you should destroy your notes.  
5     Whether or not you took notes, you should rely on your own  
6     memory of the evidence. Notes are only to assist your memory.  
7     You should not be overly influenced by your notes or those of  
8     your fellow jurors.

9           Number 6: There are rules of evidence that control what  
10    can be received into evidence. During the trial, when a lawyer  
11    asked a question or offered an exhibit into evidence, and a  
12    lawyer on the other side thought it was not permitted by the  
13    rules of evidence, that lawyer was allowed to object. If I  
14    overruled the objection, the question could have properly been  
15    answered and the exhibit received. If I sustained the  
16    objection, the question could not have been properly answered,  
17    and the exhibit was not received.

18          Whenever I sustained an objection to a question, you must  
19    ignore that question and must not guess what the answer might  
20    have been or consider any answer that was given.

21          During the trial, I may have ordered that evidence be  
22    stricken from the record, and that you disregard or ignore the  
23    evidence. When you are deciding the case, you must not consider  
24    the evidence that I told you to disregard.

25          Number 7: The evidence you are to consider in deciding

1 what the facts are consists of, one, the sworn testimony of any  
2 witness; two, the exhibits which are received into evidence;  
3 three, any facts to which the lawyers have agreed; and four, any  
4 facts that I instructed you to accept as proved.

5 You may also hear testimony in the form of depositions.  
6 This testimony is also evidence from which you are to decide the  
7 facts. You should draw no inferences from whether these  
8 individuals were or were not physically present in the court  
9 themselves.

10 Number 8: In reaching your verdict, you may consider only  
11 the testimony and exhibits received into evidence. Certain  
12 things are not evidence, and you may not consider them in  
13 deciding what the facts are. I'll list them for you.

14 One, arguments and statements by lawyers are not evidence.  
15 The lawyers are not witnesses. What they say in their opening  
16 statements, closing arguments, and at other times is intended to  
17 help you interpret the evidence, but it is not evidence. If the  
18 facts as you remember them differ from the way the lawyers have  
19 stated them, your memory of them controls.

20 Two, questions and objections by lawyers are not evidence.  
21 Attorneys have a duty to their clients to object when they  
22 believe a question is improper under the rules of evidence. You  
23 should not be influenced by the objection or by the court's  
24 ruling on it.

25 Three, testimony that has been excluded or stricken or that



1 you have been instructed to disregard is not evidence and must  
2 not be considered.

3 Four, anything you may have seen or heard when the court  
4 was not in session is not evidence. You are to decide the case  
5 solely on the evidence received at the trial. In addition, some  
6 evidence is received only for a limited purpose. When I  
7 instructed you to consider certain evidence only for a limited  
8 purpose, you must do so, and you may not consider that evidence  
9 for any other purpose.

10 Instruction No. 9: Evidence may be direct or  
11 circumstantial. Direct evidence is direct proof of a fact, such  
12 as testimony by a witness about what that witness personally saw  
13 or heard or did.

14 Circumstantial evidence is proof of one or more facts from  
15 which you can find another fact. You should consider both kinds  
16 of evidence.

17 The law makes no distinction between the weight to be given  
18 to either direct or circumstantial evidence. It is for you to  
19 decide how much weight to give to any evidence.

20 Number 10: In deciding the facts of this case, you may  
21 have to decide which testimony to believe, and which testimony  
22 not to believe. You may believe everything a witness says, or  
23 part of it, or none of it.

24 In considering the testimony of any witness, you may take  
25 into account, one, the opportunity and ability for the witness

1 to see and know and hear the things testified to; two, the  
2 witness's memory; three, the witness's manner while testifying;  
3 four, the witness's interest in the outcome of the case, if any;  
4 five, the witness's bias or prejudice, if any; six, whether  
5 other evidence contradicted the witness's testimony; seven, the  
6 reasonableness of the witness's testimony in light of all the  
7 evidence; and eight, any other factors that bear on  
8 believability.

9 Sometimes a witness may say something that is not  
10 consistent with something else he or she said. Sometimes  
11 different witnesses will give different versions of what  
12 happened. People often forget things or make mistakes in what  
13 they remember. Also, two people may see the same event but  
14 remember it differently. You may consider these differences,  
15 but do not decide the testimony is untrue just because it  
16 differs from other testimony.

17 However, if you decide that a witness has deliberately  
18 testified untruthfully about something important, you may choose  
19 not to believe anything that witness said; on the other hand, if  
20 you think the witness testified untruthfully about some things  
21 but told the truth about others, you may accept the part you  
22 think is true, and ignore the rest.

23 The weight of the evidence as to a fact does not  
24 necessarily depend on the number of witnesses who testify. What  
25 is important is how believable the witnesses were and how much

1 weight you think their testimony deserves.

2 Eleven, you've heard testimony from experts who testified  
3 to opinions and the reasons for their opinions. This opinion  
4 testimony was allowed because of the education or experience of  
5 the witness. Such opinion testimony should be judged like any  
6 other testimony. You may accept it or reject it, and give it as  
7 much weight as you think it deserves, considering the witness's  
8 education, experience, their reasons given for the opinion, and  
9 all the other evidence in the case.

10 Instruction 12: All parties are equal before the law, and  
11 a corporation is entitled to the same fair and conscientious  
12 consideration by you as any party.

13 Number 13: Defendant Integon General Insurance Corporation  
14 is a corporation. A corporation can act only through its  
15 officers and employees. Any act or omission of an officer or  
16 employee is the act or omission of the corporation. A  
17 corporation is charged with the knowledge of its officers,  
18 agents, and employees.

19 Instruction No. 14: In this case, the plaintiff was  
20 required to prove each of the claims by a preponderance of the  
21 evidence. When a party has the burden of proof on any claim by  
22 a preponderance of the evidence, it means that you must be  
23 persuaded by the evidence that the claim is more probably true  
24 than not true. You should base your decision on all the  
25 evidence, regardless of which party presented it.

1           Instruction 15: The term "proximate cause" means a cause  
2           which in a direct sequence produces the injury complained of and  
3           without which such injury would not have happened. There may be  
4           more than one proximate cause of an injury.

5           Instruction 16: An underinsured motorist UIM policy  
6           provides coverage to its insured for injuries or damages caused  
7           by an at-fault, underinsured motorist. The purpose of UIM  
8           insurance is to allow an injured party to recover those damages  
9           that the injured party would have received had the at-fault  
10          party been insured with liability limits as broad as the injured  
11          party's own UIM insurance limits.

12          Instruction 17: Benefits claim. The Integon General  
13          Insurance Corporation policy provides UIM coverage for any  
14          injury and damages which was proximately caused by the April  
15          23rd, 2016, collision. The plaintiff has the burden of proving  
16          what injuries and damages to the plaintiff were proximately  
17          caused by this and what amount the plaintiff should be  
18          recovered.

19          Number 18: Consumer Protection Act claim. Plaintiff  
20          Hopkins claims that defendant Integon General Insurance  
21          Corporation violated the Washington Consumer Protection Act. To  
22          prove this claim, plaintiff Hopkins has the burden of proving  
23          each of the following propositions:

24                 One, that defendant Integon General Insurance Corporation  
25                 engaged in an unfair or deceptive act or practice; two, that the

1 act or practice occurred in the conduct with defendant Integon  
2 General Insurance Corporation's trade or commerce; three, that  
3 the act or practice affects the public interest; four, that  
4 plaintiff Hopkins was injured in either his business or his  
5 property; and five, that defendant Integon General Insurance  
6 Corporation's act or practice was a proximate cause of plaintiff  
7 Hopkins' injury.

8 If you find from your consideration of all the evidence  
9 that each of these propositions has been proved, your verdict  
10 should be for plaintiff Hopkins on this claim. On the other  
11 hand, if any of these propositions has not been proved, your  
12 verdict should be for defendant Integon General Insurance  
13 Company on this claim.

14 Instruction 19: A violation, if any, of one or more of the  
15 following statutory or regulatory requirements is a failure to  
16 provide benefits, an unfair or deceptive act or practice under  
17 the rules of insurance under the Consumer Protection Act and a  
18 breach of the duty of good faith;

19 One, failing to acknowledge and act reasonably promptly  
20 upon communications with respect to claims arising under  
21 insurance policies; two, failing to adopt and implement  
22 reasonable standards for the prompt investigation of claims  
23 arising under an insurance policy; three, refusing to pay claims  
24 without conducting a reasonable investigation; four, not  
25 attempting in good faith to effect prompt, fair, and equitable

1 settlement of claims in which liability has become reasonably  
2 clear; five, failing to promptly provide a reasonable  
3 explanation of the basis in the insurance policy in relation to  
4 the facts or applicable law for denial of a claim; six,  
5 compelling an insured to initiate or submit to litigation,  
6 arbitration, or appraisal to recover amounts due under an  
7 insurance policy by offering substantially less than the amounts  
8 ultimately recovered in such actions or proceedings.

9       Number 20: A single violation of a statute or regulation  
10 related to the business of insurance is an unfair or deceptive  
11 act or practice. A violation of these statutes and  
12 administrative rules also affects the public interest.  
13 Statutory and administrative rules that govern insurance  
14 companies are set forth in jury instructions above.

15       If you find that a violation of a statute or regulation  
16 relating to the business of insurance has occurred, then you  
17 must find that the first three elements of Consumer Protection  
18 Act violation have been proved.

19       Number 21: An insured has suffered a, quote, injury, under  
20 the Consumer Protection Act if their property or business has  
21 been injured to any degree.

22       The injury element is met if the insured's property,  
23 interest, or money is diminished because of the unlawful  
24 conduct, even if the expenses caused by the statutory regulatory  
25 violation is minimal.

1 Under the Consumer Protection Act, plaintiff has the burden  
2 of proving that he has been injured, but no monetary amount need  
3 be proved, and the proof of any injury is sufficient, even if  
4 expenses or losses caused by the violation are minimal.

5 Injuries to business or property include financial costs or  
6 loss.

7 Number 22: Insurance Fair Conduct Act claim. Plaintiff  
8 Hopkins claims that defendant Integon General Insurance  
9 Corporation has violated the Washington Insurance Fair Conduct  
10 Act. To prove this claim, the plaintiff has the burden of  
11 proving each of the following propositions:

12 One, that defendant Integon General Insurance Corporation  
13 unreasonably denied payment of benefits; two, that plaintiff  
14 Hopkins was damaged; three, that defendant Integon General  
15 Insurance Corporation's act or practice was a proximate cause of  
16 damage.

17 If you find from your consideration of all the evidence  
18 that each of those propositions has been proved, your verdict  
19 should be for the plaintiff Hopkins on this claim. On the other  
20 hand, if any of these propositions has not been proved, your  
21 verdict should be for defendant Integon General Insurance  
22 Corporation on this claim.

23 Number 23: Failure to act in good faith claim. An insurer  
24 has a duty to act in good faith. This duty requires an insurer  
25 to deal fairly with its insured. The insurer must give equal

1 consideration to its insured's interest and its own interests,  
2 and must not engage in any action that demonstrates a greater  
3 concern for its own financial interest than its insured's  
4 financial risk. An insurer who does not deal fairly with its  
5 insured or who does not give equal consideration to its  
6 insured's interests fails to act in good faith.

7 In proving that an insurer failed to act in good faith, an  
8 insured must prove that the insurer conduct was unreasonable,  
9 frivolous, or unfounded. The insured is not required to prove  
10 the insurer acted dishonestly or that the insurer intended to  
11 act in bad faith.

12 Instruction No. 24: The duty of good faith requires an  
13 insurer to conduct a reasonable investigation before refusing to  
14 pay a claim submitted by its insured. An insurer must also have  
15 a reasonable justification before refusing to pay a claim. An  
16 insurer who refuses to pay a claim without conducting a  
17 reasonable investigation or without having a reasonable  
18 justification fails to act in good faith.

19 Number 25: The reasonableness of the defendant's claim  
20 handling must be measured as of the time that the conduct  
21 occurred, and based on the facts known to it at the time.

22 Number 26: The negligence claim. The plaintiff has the  
23 burden of proving each of the following propositions on the  
24 claim of negligence:

25 First, that Integon General Insurance Corporation acted or



1 failed to act in one of the ways claimed by the plaintiff, and  
2 that in so acting or failing to act, Integon General Insurance  
3 Corporation was negligent; second, that the plaintiff was  
4 harmed; third, that the negligence of Integon General Insurance  
5 Corporation was a proximate cause of damage to the plaintiff.

6 If you find from your consideration of all the evidence  
7 that each of these propositions has been proved, your verdict  
8 should be for the plaintiff on this claim. On the other hand,  
9 if any of these propositions has not been proved, your verdict  
10 should be for Integon General Insurance Corporation on this  
11 claim.

12 Instruction 27: Negligence is the failure to exercise  
13 ordinary care. It is the doing of some act that a reasonably  
14 careful person would not do under the same or similar  
15 circumstances, or the failure to do some act that a reasonably  
16 careful person would have done under the same or similar  
17 circumstances.

18 Ordinary care means the care that a reasonably careful  
19 person would exercise under the same or similar circumstances.

20 Instruction No. 28: An insurance regulation provides that  
21 the following is applicable to all insurers:

22 One, every insurer shall complete investigation of a claim  
23 within 30 days after the notification of the claim, unless such  
24 investigation cannot reasonably be completed within such time;

25 Two, if the insurer needs more time to determine whether a

1 claim should be accepted or denied, it shall so notify the  
2 claimant within 15 days, giving the reasons more time is needed.  
3 If the investigation remains incomplete, the insurer shall,  
4 within 45 days from the date of the initial notification, and no  
5 later than every 30 days thereafter, send to such claimant a  
6 letter setting forth the reasons that additional time is need  
7 for investigation.

8 Three, for all other pertinent communications from a  
9 claimant reasonably suggesting that a response is expected, an  
10 appropriate reply must be provided within 10 working days for  
11 individual insurance policies, or 15 working days with respect  
12 to communications arising under group insurance contracts.

13 Four, the insurer's claims files are subject to examination  
14 by the commissioner or by a duly appointed designee. The files  
15 must contain all notes and work papers pertaining to the claim  
16 in enough detail that pertinent events and dates of the events  
17 can be reconstructed.

18 Number 29: The violation, if any, of a statute or  
19 administrative rule is not necessarily negligence, but it may be  
20 considered by you as evidence in determining negligence.  
21 Statutory and administrative rules that govern insurance  
22 companies are set forth in Instruction No. 19 and 28 above.

23 Instruction No. 30: Damages, benefits claim. It is your  
24 duty to determine the value of plaintiff Hopkins' claim for  
25 insurance benefits, which is the amount of money that will

1 reasonably and fairly compensate plaintiff Hopkins for such  
2 damages as you find were proximately caused by the negligence of  
3 the at-fault driver in the April 23rd, 2016, collision.

4 In determining the value of that claim, you shall not  
5 consider the limits of plaintiff Hopkins' UIM policy. You  
6 should consider the following past economic damage elements:

7 The reasonable value of necessary medical care, treatment,  
8 and services received at the present time. Plaintiff Hopkins  
9 and defendant Integon General Insurance Company agreed that this  
10 amount totals \$10,931.

11 In addition, you should consider the following noneconomic  
12 damage elements: The nature and extent of the injuries; the  
13 disability, disfigurement, and loss of enjoyment of life --  
14 excuse me. I think we have someone's mike -- could that  
15 individual please mute?

16 Let me back up.

17 In addition, you should consider the following noneconomic  
18 damage elements: The nature and extent of the injuries; the  
19 disability, disfigurement, and loss of enjoyment of life  
20 experienced and, with reasonable probability, to be experienced  
21 in the future; the pain and suffering, both mental and physical,  
22 and inconvenience experienced and, with reasonable probability,  
23 to be experienced in the future.

24 Plaintiff has been paid \$10,000 in personal injury  
25 protection and \$25,000 from Progressive Insurance Company for

1 Ms. Montes causing the collision. You are not to consider the  
2 fact that plaintiff Hopkins has already received these payments  
3 in calculating your damages.

4 The question of who pays or whom reimburses whom will be  
5 decided by the court in another proceeding after you return your  
6 verdict.

7 It is the duty of the court to instruct you as to the  
8 measure of damages. That is the amount of money that will  
9 reasonably and fairly compensate plaintiff Hopkins on plaintiff  
10 Hopkins' claim that Integon General Insurance Corporation  
11 violated the Consumer Protection Act, the Insurance Fair Conduct  
12 Act, failed to act in good faith, and for negligence, and by  
13 instructing you as to the measure of damages of those claims,  
14 the court does not mean to suggest for which party your verdict  
15 should be rendered as to those claims.

16 Consumer Protection Act: If you find for plaintiff Hopkins  
17 on his claim that defendant Integon General Insurance  
18 Corporation violated the Washington Consumer Protection Act,  
19 then the damages that you may award for this claim are limited  
20 to plaintiff Hopkins' unreimbursed medical expenses and the  
21 expert witness fee that plaintiff Hopkins paid for this case.  
22 Plaintiff Hopkins' unreimbursed medical expenses totaled \$935  
23 and the expert witness fees he paid totaled \$16,000.

24 Insurance Fair Conduct Act: If you find for plaintiff  
25 Hopkins on this claim that defendant Integon General Insurance

1 Corporation violated the Washington Insurance Fair Conduct Act,  
2 then you should consider the following damages:

3 Any emotional distress that plaintiff Hopkins suffered as a  
4 proximate result of the defendant Integon General Insurance  
5 Corporation's violation of the Insurance Fair Conduct Act; loss  
6 or diminished assets or property.

7 Failure to act in good faith, if you find for plaintiff  
8 Hopkins on his claim that defendant Integon General Insurance  
9 Company failed to act in good faith, then you should consider  
10 the following elements of damage:

11 Any emotional distress that Plaintiff Hopkins suffered as a  
12 proximate result of defendant Integon General Insurance  
13 Company's failure to act in good faith; loss or diminished  
14 assets or property.

15 Negligence: If you find for plaintiff Hopkins on his claim  
16 that defendant Integon General Insurance Company was negligent,  
17 then you should consider the following elements of damages:

18 Any emotional distress that plaintiff Hopkins suffered as a  
19 proximate result of Integon General Insurance Corporation's  
20 negligence; loss or diminished assets or property.

21 The burden of proving damages rests upon plaintiff Hopkins,  
22 and it is for you to determine, based upon evidence, whether any  
23 particular element has been proved by a preponderance of  
24 evidence.

25 Your award must be based on evidence, and not upon

1 speculation, guess, or conjecture.

2 The law has not furnished us with any fixed standards by  
3 which to measure noneconomic damages. With respect to these  
4 matters, you must be governed by your own judgment, by the  
5 evidence in the case, and by these instructions.

6 When determining the damages for each or any individual  
7 claim that has been proven by plaintiff Hopkins, you should  
8 determine what damages were proven, by a preponderance of the  
9 evidence, for that individual claim, regardless of any amount  
10 determined or awarded for any other claim. In other words, you  
11 should determine the amount of damage for any individual claim  
12 as if it were the only claim that was asserted or proven.

13 If you determine that more than one claim has been proven  
14 and award damages for more than one claim, then the total award  
15 is reflected, and the verdict form should not duplicate the  
16 damages. In other words, if you conclude that plaintiff Hopkins  
17 suffered the same economic or noneconomic damages as a result of  
18 more than one of the causes of action that was proven, then the  
19 total award should only reflect those damages one time. Thus,  
20 the total award recorded in the verdict form should reflect  
21 total damages suffered by plaintiff Hopkins, not a duplicate of  
22 the same damages.

23 Instruction 31: An insured has a duty of good faith to the  
24 insurer. Plaintiff Hopkins complied with his duty.

25 Instruction No. 32: If your verdict is for the plaintiff,

1 and if you find that, one, before this occurrence, the plaintiff  
2 had a condition that was not causing pain or disability, and,  
3 two, the condition made the plaintiff more susceptible to injury  
4 than a person in normal health, then you should consider all of  
5 the injuries and damages that were proximately caused by the  
6 occurrence, even though those injuries due to the pre-existing  
7 condition may have been greater than those that would have been  
8 incurred under the same circumstances by a person without that  
9 condition.

10 No. 33: A verdict form has been prepared for you to fill  
11 out electronically. After you have reached unanimous agreement  
12 on a verdict, your presiding juror will fill in the form that  
13 has been given to you, sign and date it, and advise the  
14 courtroom deputy that you are ready to return to the courtroom.

15 Instruction No. 34: I'll now say a few words about your  
16 conduct as jurors.

17 First, keep an open mind, and do not decide what the  
18 verdict should be until you and your fellow jurors have  
19 completed your deliberations.

20 Second, because you must decide this case based only on the  
21 evidence received in the case and on my instructions as to the  
22 law that applies, you must not be exposed to any other  
23 information about the case or to the issues it involves during  
24 the course of your jury duty. Thus, until the end of the case  
25 or unless I tell you otherwise, do not communicate with anyone

1 in any way, and do not let anyone else communicate with you in  
2 any way about the merits of the case or anything to do with it.  
3 This includes discussing the case in person, in writing, by  
4 phone or electronic means, via email, text messaging, or any  
5 Internet chat room, blog, website, or other feature.

6 This applies to communicating with your fellow jurors until  
7 I give you the case for deliberation and applies to  
8 communicating with everyone else, including your family members,  
9 your employer, and the people involved in the trial. Although  
10 you may notify your family and your employer that you've been  
11 seated as a juror in the case, but if you are asked, in any way,  
12 about your jury service or anything about this case, you must  
13 respond that you've been ordered not to discuss the matter and  
14 to report the contact to the court.

15 Because you've received all the evidence and legal  
16 instruction you properly may consider to return a verdict, do  
17 not read, watch, or listen to any news or media accounts or  
18 commentary about the case or anything to do with it.

19 Do not do any research, such as consulting dictionaries,  
20 searching the Internet, or using other reference materials, and  
21 do not make any investigation or in any other way try to learn  
22 about the case on your own.

23 The law requires these restrictions to ensure that the  
24 parties have a fair trial based upon the same evidence that each  
25 party has had an opportunity to address.



1 A juror who violates these restrictions jeopardizes the  
2 fairness of these proceedings, and a mistrial could result that  
3 would require the entire trial process to start over. If any  
4 juror is exposed to any outside information, please notify the  
5 court immediately.

6 Instruction No. 35: Before you begin your deliberations,  
7 elect one member of the jury as your presiding juror. The  
8 presiding juror will preside over the deliberations and serve as  
9 the spokesperson for the jury in court.

10 You should diligently strive to reach agreement with all of  
11 the other jurors, if you can do so. Your verdict must be  
12 unanimous. Each of you must decide the case for yourself, but  
13 you should do so only after you've considered all the evidence,  
14 discussed it fully with the other jurors, and listened to their  
15 views. It's important that you attempt to reach a unanimous  
16 verdict, but, of course, only if each of you can do so after  
17 having made your own conscientious decision.

18 Do not be unwilling to change your opinion if the  
19 discussion persuades you that you should, but do not come to a  
20 decision simply because other jurors think it is right, or  
21 change an honest belief about the weight and effect of the  
22 evidence simply to reach a verdict.

23 Ladies and gentlemen, that concludes the reading of the  
24 court's instructions. You should have also received a verdict  
25 form. As I indicated to you previously, a verdict form will go

1 with you to the jury room, and it will be able to be filled out  
2 by the jury foreperson.

3 I ask now that you give your kind attention to Mr. Wampold.  
4 He has the privilege of giving the closing arguments for  
5 Mr. Hopkins.

6 Mr. Wampold?

7 MR. WAMPOLD: Thank you, Your Honor.

8 Good morning, members of the jury. Again, it may be useful  
9 to put this in speaker mode, and then move the screen around,  
10 because I'm going to have the screen on the entire time, so do  
11 whatever you wish, but that may be useful.

12 And with your permission, Judge Pechman, I'll begin?

13 THE COURT: Yes, please do so.

14 PLAINTIFF'S CLOSING ARGUMENT

15 MR. WAMPOLD: May it please the court, counsel,  
16 members of the jury.

17 You're here to decide -- for two reasons, really -- to  
18 decide the proper value of Mr. Hopkins' damages caused by the  
19 April 23rd, 2016, collision, and to enforce the insurance laws  
20 that are designed to ensure that insurance companies treat their  
21 policyholders fairly, and that they do not act against the law  
22 and the public interest.

23 Now, I want to begin by talk about your role as a jury.

24 During this trial, you've seen that we've given Judge  
25 Pechman a lot of respect, and that respect is deserved. But one

1 of the things that's been lost that we would have had if we'd  
2 been in court -- and this is, from my understanding, only the  
3 second time in the history of the United States that we've had a  
4 Zoom trial, and we're all learning. But one of the things  
5 that's been lost is, had we all been in person, every time you  
6 came into the courtroom, we would stand for you, and every time  
7 you left the courtroom, we would stand for you. And that honor  
8 has been lost, but it's too bad, because we do -- you are very  
9 important to this process, and the reason that we stand when  
10 we're in person is because, in reality, you are the most  
11 important people in this courtroom, and that's because of your  
12 role in this case.

13 Our role is to advocate for Mr. Hopkins. Defense counsel,  
14 Mr. Harris and Ms. Lee, their role is to advocate for the  
15 insurance company. Judge Pechman's role is to decide what  
16 evidence comes before you and to tell you what the law is. But  
17 you have the most important role. You will be the ones that  
18 will decide what justice is in this case. And this case is  
19 important, and your decision will be on record for everyone to  
20 see. Jury trials are public, and verdicts stand on record in  
21 the courthouse for the world to see your work.

22 Now, Judge Pechman said this yesterday, and it's true. Our  
23 legal system in our country is a beacon of justice around the  
24 country (sic). Our system gives great power to the people, to  
25 citizens.

1           The way our system works is that the legislature writes the  
2     laws, but juries like you enforce them. And unlike the  
3     legislative branch, no one can influence you. They can't offer  
4     you money or a job when they're done. They can't pay you. It's  
5     just citizens coming together from a cross section of our  
6     community to decide cases in an unbiased way, and this is an  
7     integral part of our democracy.

8           Now, this is an insurance case. You all know that. You've  
9     heard that word "insurance" more times than you probably want to  
10    in the last week or so. But insurance cases are important, and  
11    the reason insurance is important is because insurance is meant  
12    to protect people when they need it most. We all hope to never  
13    need insurance, but we pay premiums every month so that we have  
14    that protection when tragedy strikes. It is the umbrella meant  
15    to protect us on a rainy day, and we pay good money, every  
16    month, for the promise of that protection.

17          But as you heard in this trial, insurance is a strange  
18    product. Every month you make a payment. Think about the other  
19    products you pay for every month. Electricity, cable, garbage,  
20    water. In exchange for all of those payments, you get something  
21    tangible. With insurance, you don't get anything tangible; no  
22    electricity, no cable, no garbage. What you get is a promise.  
23    That's all you get, a promise, a promise that an insurance  
24    company will pay you when you need it.

25          But how does one make insurance companies live up to that

1 promise? Obviously, the better business model for the insurance  
2 company is just to accept your premium every month, and then  
3 when it's time to fulfill the promise, say, "No, thank you."  
4 What is it that stops insurance companies from saying, "Yes,  
5 your injuries are quite significant, but we do not want to cover  
6 it because it's not in our financial interest. We'd rather keep  
7 your premiums and the money we owe you. We make more money that  
8 way." What happens if they do that?

9 Well, if the insurance company does that, it's too late to  
10 switch insurance companies. Once the tragedy strikes and you  
11 need the coverage, it's too late to switch horses. So what can  
12 be done to stop insurance companies, like Integon, from breaking  
13 their promise? What is stopping Integon from acting in its own  
14 financial interest? What is it that forces insurance companies  
15 to act reasonably and fairly? The answer is you; you, the jury.

16 We know that insurance companies are financially  
17 incentivized to stiff people, like Integon has tried to do to  
18 Mr. Hopkins in this case. That is why we have laws meant to  
19 stop this behavior.

20 But even though these laws are on the books, insurance  
21 companies still have the arrogance to act like they're above the  
22 law; disagreeing with doctors without any foundation; doing no  
23 investigation; concluding early on, "Yeah, if you want the  
24 limits, you'll have to sue us." That is what you do when you're  
25 so big and important that you believe you can ignore the law.

1 You are above the law. And that is why juries like you are so  
2 important.

3 Integon probably assumed at some point that Mr. Hopkins  
4 would just give up. That's why they offered so little, \$17,000  
5 and then \$40,000. They figured at some point Mr. Hopkins would  
6 cave and take the little amount they offered, even though it  
7 wasn't fair. But guess what? Here we are. Here we are, in the  
8 middle of a pandemic, and we've made it all through a trial.  
9 Thanks to Judge Pechman and the courts, the justice system is  
10 open for business. And you, now, can stop -- you are the only  
11 ones that can stop Integon from this bully behavior of refusing  
12 to do what the law and the policy require them to do.

13 Now, when you go back to the jury room, when we're all done  
14 with closing arguments here, you're going to have two jobs.  
15 One, you're going to have decide what your answers are to each  
16 of the questions that Judge Pechman has asked you in the verdict  
17 form.

18 Your Honor, do the jurors have the verdict form?

19 THE COURT: Yes, they do, Mr. Wampold.

20 MR. WAMPOLD: Okay. Thank you.

21 THE CLERK: Your Honor, I need to email that out to  
22 them.

23 THE COURT: Oh. It's coming.

24 MR. WAMPOLD: Well, I'll give you a little preview of  
25 it, and because this is what you're really going to do. Judge

1 Pechman, in the verdict form, has asked you questions, and,  
2 one, you're going to have to decide what the answers are to each  
3 of the questions Judge Pechman has asked. And then you're going  
4 to have to explain to your fellow jurors why you've answered  
5 those questions the way you have, and I plan to use my time this  
6 morning to help you answer those questions.

7 The first question is for you to value Mr. Hopkins' claim.

8 Now, importantly, if you look at Instruction No. 30 -- we  
9 just read it -- Judge Pechman tells you to not consider the  
10 \$250,000 limit or the money that Mr. Hopkins has already  
11 received, the \$25,000 from Ms. Montes and the \$10,000 for  
12 medical bills.

13 What Judge Pechman has explained is the question of who  
14 pays or who reimburses who will be decided by Judge Pechman in  
15 another proceeding. So as Judge Pechman has said several times,  
16 you have to trust her. You have to follow her instructions and  
17 trust that she knows what she's doing. So what you-all are  
18 going to do is the exercise that Integon never performed but  
19 that Mr. Hopkins had paid them to do, which is to evaluate,  
20 overall, what his claim was worth. That is what you're going to  
21 do.

22 Now, the first item in Instruction No. 30 is the economic  
23 damages that the parties agree are \$10,931. That amount should  
24 be included in this figure. But also included on this line  
25 should be the noneconomic damages. And this is where it gets

1 more interesting, because, as Judge Pechman instructed you,  
2 there is no fixed formula for how you come up with this amount.  
3 You-all will have to work together as a community to decide what  
4 is justice, based on the evidence.

5 But Judge Pechman, in her wisdom, doesn't leave you at sea  
6 without a compass. She gives you some guidance on how to arrive  
7 at the right number.

8 For starters, we need to look at what the measuring stick  
9 is for proving damages. This is from Jury Instruction No. 30,  
10 and it says, "The burden of proving damages rests upon the  
11 plaintiff. It is for you to determine, based upon the evidence,  
12 whether any particular element has been proved by a  
13 preponderance of the evidence."

14 Now, this is very important. This is not a criminal trial.  
15 In a criminal trial, where someone could go to jail, the burden  
16 is beyond a reasonable doubt. So if we have scales, it's beyond  
17 a reasonable doubt. It's a very, very high burden. And that  
18 burden can be frustrating for jurors who are bound by this  
19 standard of measuring justice.

20 In a criminal setting, when the burden is very high, almost  
21 black-and-white certainty, it can be frustrating for jurors who  
22 say, "You know, I think this person did X, Y, or Z, but I just  
23 can't say beyond a reasonable doubt," and so the doubt allows an  
24 out. A defense can hire an expert, muddy the waters, throw up  
25 different things to see what sticks, and jurors feel frustrated



1 that the doubt creates an out.

2 In a civil trial, it's a different standard, and let me  
3 read this to you. This is Instruction No. 14.

4 "In this case, the plaintiff is required to prove each of  
5 his claims by a preponderance of the evidence. When a party has  
6 the burden of proof on any claim by a preponderance of the  
7 evidence, it means you must be persuaded by the evidence that  
8 the claim is more probably true than not true."

9 So beyond a reasonable doubt is like this, and more  
10 probably true than not true is like this, 51 percent.

11 And this, in a civil trial, where no one is going to jail,  
12 the jury is allowed to apply this much more manageable standard.  
13 Preponderance is an approach in which jurors get to weigh  
14 conflicting evidence and decide which is probably true and not  
15 true.

16 Casting doubt does not create an out in civil cases.  
17 Reason and common sense carry the day, rather than how much  
18 confusion and doubt the other side can stir up.

19 So when you're calculating damages in the back, there may  
20 be someone that says, "You know, I'm just not sure, I have  
21 doubts," remind them of the law. The law is preponderance. You  
22 can have doubts. You can have reasonable doubts. It's just  
23 what is more reasonably true than not true.

24 So let's look at the other guidance that Judge Pechman  
25 provides you to value Mr. Hopkins' claim.

1 In Instruction 30, she said, "It is your duty to determine  
2 the value of plaintiff Hopkins' claim for insurance benefits,  
3 which is the amount of money that will reasonably and fairly  
4 compensate plaintiff Hopkins for such damages."

5 And I want to talk about a couple of words here.  
6 Reasonable, and that means in accordance within reason or sound  
7 thinking, within the bounds of common sense. And I'm going to  
8 give you reasons for each element of damages that I'm going to  
9 ask for.

10 Fair, you all know what fair means: Impartial, in  
11 accordance with the evidence, law, rules, logic, unbiased,  
12 unprejudiced. Put aside your preconceived notions. That's  
13 fair.

14 Now, compensate. This is an interesting word. It's,  
15 actually, an old English word that means balance the scales.  
16 You've all seen the scales of justice, you've seen that, and  
17 that is what compensate refers to. And the reason is is that  
18 when there's been an injury like this, and somebody's life has  
19 been forever altered, the scales of justice are out of  
20 alignment, and so it's your job, as the jury, to compensate.

21 What does that mean? Well, it's an old British term -- an  
22 Old English term that means you put weight on this end of the  
23 scales to bring them back into alignment. And you, basically,  
24 have to decide how much money -- because that's all we can do.  
25 We don't have an eye for an eye anymore. The way we deal with

1 this is money. You have to decide how much money to put on the  
2 scales of justice.

3 Now, to do that, you have to compensate Mr. Hopkins for the  
4 life that was taken from him, and the concept is pretty  
5 straightforward. You need to decide what is fair trade value to  
6 put on the scales of justice to make up for the harm that  
7 Mr. Hopkins has experienced and what he will experience for the  
8 rest of his life.

9 A good example of how this works is if you had a horrible  
10 car accident, and one of the cars was completely destroyed, and  
11 when this happens, juries have to determine what's the fair  
12 trade value of that car before the collision, and appraisers  
13 would say the car was worth this, and you would ask to write  
14 that down. That is what you're doing here. You're coming up  
15 with a fair trade value of the life that was taken from  
16 Mr. Hopkins.

17 So let me talk about that life a little bit.

18 You heard that Mr. Hopkins was someone who worked hard his  
19 whole life. He came out to Seattle in the '80s. He started a  
20 business. He ran that business for decades. He raised a  
21 family. You heard Sarah Hopkins talk about what a great dad  
22 Daniel Hopkins was, how he wrestled with his daughters, he was  
23 silly. He was always there.

24 Then, in 2011, he had a tragedy strike. He had to retire.  
25 He had to change his whole life.

1 But through hard work, Dan Hopkins came back. This is not  
2 somebody who just sits around and feels sorry for himself. This  
3 is somebody who works hard, he has his whole life, and that's  
4 what he did in 2011. He worked hard, he tried his best to get  
5 back.

6 And, finally, after several years, he really was able to  
7 get back most of his life, and you know that. He was able to  
8 really be in a position where he could enjoy his golden years.  
9 He could enjoy sailing. He could enjoy helping out other boats  
10 on the dock. He could enjoy his children and his grandchild,  
11 and, hopefully, other grandchildren.

12 Now, those golden years were, unfortunately, tarnished by  
13 this injury, and now he has to significantly curtail the life  
14 that he had to deal with the injuries that he is suffering from.

15 So you, basically, are the appraisers of what Dan Hopkins  
16 lost.

17 Now, you may be thinking to yourself, How can we come up  
18 with a value of Dan Hopkins enjoying his golden years? Each  
19 person is unique and priceless, and their golden years are  
20 unique.

21 Well, the answer to that is, there's lots of priceless and  
22 unique things in our society, and many of those things we  
23 provide a lot of value to, we give them great value. So if  
24 someone in the jury room says, How can you put a value on the  
25 harm here? Remind them of all the priceless and unique things

1 that we put value on. It just means that it's worth a lot.

2 So there are appraisers for high-end homes and paintings,  
3 and now there is an appraiser for what Dan Hopkins had taken  
4 from him: You. You will be the conscience of this community,  
5 and you will decide what justice is in this case.

6 You probably noticed that there were lots of experts in  
7 this case. There were experts on neurology and insurance and  
8 physical therapy, but none on the value of what was taken from  
9 Mr. Hopkins. And the reason is is that you are the community's  
10 experts on that value, and you all have life experience that you  
11 need to decide what the fair trade value is for what was taken  
12 from Mr. Hopkins.

13 Now, one question that may come up for you-all is how do we  
14 factor in the fact that Mr. Hopkins was vulnerable to this  
15 injury because of the 2011 traumatic brain injury? Well, Judge  
16 Pechman provided you with the law on that as well.

17 This is Instruction 32. This is a very important  
18 instruction. And what this says is that, basically, it doesn't  
19 matter that Mr. Hopkins had this traumatic brain injury in 2011  
20 and that he had recovered so well but that he was susceptible to  
21 an injury more than a normal person.

22 What Judge Pechman says is you should consider all the  
23 injuries and damages that were caused by the occurrence, even  
24 though those injuries, due to the pre-existing condition, may  
25 have been greater than those that would have been incurred under

1 the same circumstances by a person without that condition.

2 So what this -- if somebody back in the jury room, says,  
3 "Hey, it's not Integon's fault that Mr. Hopkins had a previous  
4 TBI," remind them of Instruction No. 32. It doesn't matter.  
5 Integon is responsible for all of the damages that he  
6 experienced.

7 Now, you know that Mr. Hopkins, in 2011, before his crash,  
8 was doing great. He was working. He was still living a very,  
9 very good life. And then he got knocked down by that crash, and  
10 that was a significant crash. And when he got knocked down, he  
11 had to stop working. He was in a lot of pain. He had a lot of  
12 physical disabilities.

13 But then he worked very hard, and he got nearly back to  
14 where he was, and you see that in the medical records. And now,  
15 because of the 2016 crash, he's knocked way back down to where  
16 he was back in 2011. And, unfortunately, because this is  
17 permanent, he hasn't made it all the way back. He's not back to  
18 the baseline of where he was in 2015. And, unfortunately, no  
19 one is more upset about this than Dan Hopkins. He can't get all  
20 the way back. He never will.

21 So what is the fair trade value of that loss? That is the  
22 question. And what I would submit is that he should be  
23 compensated for the constant, daily, swaying sensation he has to  
24 endure. He should be compensated for the way he has to change  
25 his life, the way he thinks about his life, strategizes, how he

1 has to plan differently, avoid areas, think about his  
2 activities, slow down his activities, not do things. He has to  
3 be compensated for the way he has to go through life that's  
4 completely different than before this collision.

5 Now, this is a Sisson painting, and many of you are  
6 probability wondering why I have a Sisson painting up there now.  
7 And the reason is is because the fair trade value of this Sisson  
8 painting is about \$250 million. That was how much the seller  
9 valued this painting. Why? Because it's unique.

10 You also probably have heard that Russell Wilson, the  
11 Seahawk quarterback, got \$205 million for four years. Why?  
12 Because he's unique.

13 So if someone destroyed this painting, negligently, would  
14 there be any doubt that they would be on the hook for the fair  
15 trade value of the \$250 million? If someone hurt Russell Wilson  
16 so that he couldn't fulfill his contract, is there any doubt  
17 that they would have to pay hundreds of millions of dollars?

18 This is no difference. Mr. Hopkins is unique, he's got a  
19 unique life, and the question for you is, what is the fair trade  
20 value of what was taken from Mr. Hopkins?

21 Now, I don't want to make you nervous. We're not asking  
22 for hundreds of millions of dollars in this case, or anywhere  
23 close to that, but I just do it to make a point. The reason  
24 that things like paintings and sports people get the big money  
25 they do is because of the uniqueness, and Mr. Hopkins -- you

1 know -- is a unique man who has a unique loss.

2 Now, Judge Pechman also gives you the standards to consider  
3 when coming up with what the amount should be, and you-all have  
4 seen this during the course of the trial, and she tells you that  
5 when evaluating noneconomic damages, these are the factors you  
6 are to consider.

7 And based on these factors, it's my job to suggest a number  
8 for you, and I will, I will suggest that number for you. But I  
9 want to make this clear: Ultimately, you-all are the conscience  
10 of the community, and it's you who will decide this; not me, not  
11 Mr. Harris, not Judge Pechman. This will be you. And so it's  
12 my job to make suggestions; it's your job to decide what the  
13 proper amount to put on the scales of justice is. So if you  
14 think what I'm about to propose is too little, you should give  
15 more, and put more on the scales of justice. If you think what  
16 I've suggested is too much, then you should give less. This is  
17 completely up to you.

18 Now, Mr. Strzelec explained that this is what Integon  
19 should have done and never did. So what you're going to do is  
20 to do what Integon -- what Mr. Hopkins paid for them to do,  
21 which was to evaluate what his claim is worth. You're going to  
22 do what Integon never did. Under these different damages, what  
23 is this claim worth?

24 And if you break it out, there's a lot of different aspects  
25 of this claim. There's the nature and extent of the injuries;



1 loss of enjoyment of life, past and future; disability, past and  
2 future; disfigurement, past and future; pain and suffering, past  
3 and future; and inconvenience, past and future.

4 Each of these elements is different and distinct and has to  
5 be considered separately, and these are all factors that Judge  
6 Pechman has instructed you to take into account when arriving at  
7 the fair trade value for what Mr. Hopkins' damages are from the  
8 collision, from the collision to today, and from today through  
9 the rest of his life. Judge Pechman tells you to consider all  
10 of these factors, and I'm going to go over them in some detail.

11 Your Honor, we've been going for about a half an hour.  
12 Should I have the jurors stand up and take a stretch?

13 THE COURT: Yes. Ladies and gentlemen, let's stand up  
14 and stretch so we can give our full attention back.

15 (Off the record 10:06 to 10:07)

16 THE COURT: Mr. Wampold, you may continue.

17 MR. WAMPOLD: Thank you, Your Honor.

18 So there is really three distinct areas of time that I  
19 think you have to consider when compensating Mr. Hopkins. One  
20 is, from the accident through when Dr. Taylor finally said, Yep,  
21 you're definitely not going to improve. She thought he wasn't  
22 going to improve at the beginning, you heard her say that, and  
23 then, ultimately, she concluded, Yep, you're not going to  
24 improve at all.

25 So from that date -- from the accident through that date,

1 from the date -- that date through trial, and from trial through  
2 the remaining 14 years of his life's expectancy. That's  
3 Mr. Hopkins' life expectancy. He's 72 now, so it's about 86  
4 that is his life expectancy.

5 So his damages really vary depending on that time frame,  
6 and you know that. You know that how he experienced these  
7 events was different at the beginning than it is today and will  
8 be into the future.

9 But we have to really remember that how he didn't  
10 experience these events in a lump. It's not like he experienced  
11 the first year all at once. He experienced it hour by hour, day  
12 by day. And that's really how you have to analyze it is, what  
13 is a reasonable daily rate through, for example, the first time  
14 period? You know at the beginning it wasn't just the vertigo  
15 that he has now. He had many other symptoms, and his life was  
16 really hard.

17 So the question is, at the beginning of this injury, when  
18 he had -- couldn't listen to music, he'd get headaches all the  
19 time, he had cognition problems, what is a daily rate? And I,  
20 actually, think that Integon was fair in how they determined a  
21 daily rate during the initial time period, when he was  
22 experiencing the vertigo and the return of his brain-injury  
23 symptoms. How did they value that initial time period?

24 Well, you heard Ms. Gordon, actually, talk about this on  
25 the stand, and she said, "I will increase offer to \$40,000,

1 based on Kutsy's report that three months of treatment for  
2 cervical strain and vestibular therapy were likely needed from  
3 this accident."

4 So what she's really saying is that they're going to just  
5 consider that he was only hurt for three months, 90 days, and  
6 after 90 days, he got all better.

7 And she explained that \$40,000 wasn't her evaluation,  
8 because she knew that he had already received some funds, so  
9 she, really, explained that her valuation was, Well, we're  
10 offering \$40,000, he got \$10,000, and he also got \$25,000, so  
11 we, really, are valuing his claim for those 90 days at \$75,000.

12 And if you break that into a daily rate, it equals about  
13 \$833 a day, which is about right for that time period. If you  
14 go back and look at his medical records, that was a really tough  
15 period of time. And it breaks down to waking hours. If you  
16 look at 16 hours a day, it comes to about \$50 an hour, and I  
17 would venture to say that if you put a want ad out and ask  
18 somebody to experience all the headaches, all the cognition  
19 problems, all the problems he had during that time period, you'd  
20 have a very hard time getting somebody to endure all that for  
21 \$50 a day. So it seems reasonable.

22 So if you apply that through that beginning period, from  
23 the accident through when he reaches maximum medical  
24 improvement, this is what the analysis looks like. I,  
25 basically, took \$800 a day and broke it down by these different

1 categories that Judge Pechman has given you.

2 You know the nature and extent of his injuries, and you  
3 know they're profound. The headaches, the balance issue, and  
4 the resumption of his TBI, and it affected every aspect of his  
5 life. And then so if you apply \$300 a day for that element, you  
6 get \$261,300.

7 Then you have the loss of enjoyment of life. This is  
8 really, really significant, because you heard that Mr. Hopkins  
9 had really made it back to enjoying the life he wanted to. He  
10 was volunteering around the dock, taking multi-month sailing  
11 trips to the far reaches of Canada, and he lost a lot of joy of  
12 life during this period. I would say give him \$100 a day for  
13 this loss, which is \$87,100.

14 Disability, being disabled. You heard how frustrating that  
15 is for Mr. Hopkins to not be able to do the things he was able  
16 to do before; get upside down in people's boats, being able to  
17 walk up and down a dock without a cane. For this, I would  
18 recommend you give \$100 a day, and that's \$87,100.

19 Disfigurement. So disfigurement applies to any alteration  
20 in a person's appearance or presentation, and you know from the  
21 testimony Hopkins has disfigurement. He doesn't appear to  
22 people the way he did before. He's more tentative, he's more  
23 cautious, he has trouble -- he walks with a cane, he walks  
24 differently. You know that during this period he appeared very  
25 different, and you heard Mr. Moore talk about that, how

1 different he appeared. For that, I would recommend \$50 a day,  
2 \$43,550.

3 Suffering. Now, pain and suffering are different, and  
4 we're going to get to pain, but this is just suffering. We all  
5 know they're different. You experience the pain, but then you  
6 suffer. You suffer because the pain won't go away. If you have  
7 a headache, and you can take Advil and you know it's going to go  
8 away and you're not going to get it back forever, or maybe  
9 months, you don't have that much suffering. But when you  
10 continue day after day after day to have pain, you suffer. You  
11 have depression, you think about what's lost, how your life has  
12 changed, and for that, we would recommend \$100 a day.

13 Then there's the pain. And the problem with pain -- and  
14 you know he had a lot of pain during that time period, it's  
15 throughout his record -- the problem with pain is, we all know  
16 it gets your attention to the exclusion of everything else. It  
17 commands your attention, it demands your effort, it takes over  
18 your life, it zaps your strength, it wears you out. It takes  
19 you away from the people you love because it makes you  
20 unavailable, it makes you irritable, angry, unable, depressed,  
21 bitter, tired. You're no fun to be around when you're in pain,  
22 and, for that, we think you should include \$100 a day.

23 Inconvenience. You know that there was a lot of  
24 inconvenience here. Mr. Hopkins had to go to 59 medical  
25 appointments during this time period, and he had to spend a lot

1 of time doing his own physical therapy and taking care of  
2 himself, not overdoing it. That is inconvenient, and for that  
3 we think you should give \$50 a day.

4 The total comes out to \$800 a day, which, I think, if you  
5 see how this is broken down, that seems reasonable. So for that  
6 initial time period, we would recommend that you include  
7 \$696,800 in your verdict.

8 Now, after that, you heard that Mr. Hopkins did improve.  
9 He improved substantially. He was doing much better. But he  
10 still -- you know -- is not back to where he was, and he still  
11 has to completely change his life. If he doesn't completely  
12 change his life, he gets these horrible headaches.

13 And so we came up with an amount for that time period.  
14 From September 12, 2018, through trial, through yesterday, we  
15 came up with an amount of \$200 a day, which comes out, for  
16 waking hours, to about \$12 an hour, which seems, sort of, the  
17 minimum that you should compensate Mr. Hopkins for an injury  
18 like this, and that works out to \$152,400.

19 Now, for the rest of his life, Mr. Hopkins is expected to  
20 be on this planet for another 14 years, and that works out to  
21 5,110 days. And applying that same math, it comes out to a  
22 \$1,000,022.

23 So this is what we're recommending that you include for  
24 general damages. And what I would say to you-all is, if you  
25 don't agree with the numbers, that's fine, apply different

1 numbers. But I think the methodology should be like this,  
2 because this is how he experienced these injuries. He  
3 experienced it minute by minute, day by day, hour by hour. So  
4 whatever analysis you do to come up with how much these  
5 different elements are worth in general damages, it should be  
6 some method like this. But we would recommend that you use this  
7 \$1,871,200. And if you add that to the medical bills, it comes  
8 up to \$1,882,131. And if you think it should be higher, make it  
9 higher; if you think it should be lower, make it lower. This is  
10 up to you.

11 Now, I can anticipate what Mr. Harris is going to say,  
12 because he said it in opening. What he said was, "Hey, this  
13 case isn't possibly worth seven figures because there wasn't a  
14 lot of visible property damage."

15 And if you remember, he didn't even show you, till very  
16 late in the trial and didn't show you in opening statement, that  
17 there actually is visible property damage. There may not have  
18 been a lot to Mr. Hopkins' car, but to Ms. Montes' car, there  
19 was enough force to bend the metal on the license plate, and  
20 there was enough force to bend the hood.

21 And notice they didn't even provide these photos to  
22 Dr. Kutsy. So they had Dr. Kutsy say the forces weren't that  
23 great, but they don't even provide the photos that show it was  
24 great enough to bend metal.

25 Also, we all know, it's common sense, that you don't have

1 to have a lot of property damage for people to be seriously  
2 hurt, and, besides, common sense, you heard the medical  
3 testimony of Dr. Taylor and Dr. Eaton explain that; that people  
4 often are really hurt, even when there isn't a lot of property  
5 damage.

6 Why is that? Why are people sometimes really hurt when  
7 there isn't a lot of property damage? Well, the reason is is  
8 it's not the metal bending that hurts us, right? If you're in a  
9 horrible collision and your car collapses on you, you get hurt.  
10 But what happens in a collision like this is, it's not the  
11 property damage. It's the sudden acceleration and deceleration  
12 of your head and neck.

13 So you heard Mr. Hopkins say his neck and head suddenly  
14 went forward and then banged against the headrest, that is what  
15 causes the injury. And we all know this makes common sense that  
16 you can be hurt this way.

17 Did you ever notice that little kids constantly play a game  
18 where they surprise each other? They jump up behind each other  
19 and hit each other in the back and laugh, and everybody thinks  
20 it's funny? But adults, we don't do that to each other. And  
21 why don't we do that to each other? The reason is is we know  
22 that if you suddenly hit somebody from behind and make their  
23 head snap forward and backwards, you can really cause harm,  
24 regardless of whether there's property damage.

25 So an example would be, I run -- I'm a runner, and I run



1 about eight miles an hour. If I put Mr. Hopkins -- and I would  
2 never do this to him -- but if I put him in the courtroom, in a  
3 chair, and I ran up to him and he's not paying attention, he's  
4 looking other places, and I ran up and I ran as fast as I could  
5 and I hit that chair, is there any doubt, with his prior injury,  
6 that his head would snap and go backwards and forwards, and he  
7 could be very badly hurt? Would it be fair if I did that --  
8 which I never would do to Mr. Hopkins, I would never do that --  
9 but would it be fair, if I did that, to say, Well, there's no  
10 damage to the chair? Of course not. The answer is of course  
11 not.

12 The problem here is the snapping of the head and neck, and  
13 it has nothing to do with the amount of visible property damage.

14 The argument that Mr. Hopkins couldn't have been badly hurt  
15 here doesn't make any sense, also, because you all know that he  
16 was vulnerable to an injury, so it didn't take a lot of force.  
17 But we also know there wasn't just enough force to bend that  
18 license plate or bend Ms. Montes' hood. There was also not --  
19 enough force to hurt someone who wasn't vulnerable in the  
20 collision, Mrs. Hopkins.

21 Mrs. Hopkins was badly hurt in the collision, and she had  
22 nerve damage, and it took her a year to get better. It  
23 shouldn't be surprising that there was enough force to badly  
24 hurt Mr. Hopkins, who was vulnerable, when Mrs. Hopkins took a  
25 year to improve.

1           So the final thing that the defense does, in trying to  
2     argue that this isn't a large case, is they bring you Dr. Kutsy.  
3     And his testimony, I have to say, was not totally clear to me,  
4     but this is what I gleaned, and we'll see if it matches what you  
5     gleaned.

6           He concedes that Mr. Hopkins was hurt. He just thinks that  
7     he should have, you know, miraculously woken up on January 1st,  
8     2018. And you're going to have to decide who to believe;  
9     Dr. Kutsy, on the one hand, that Mr. Hopkins should have woken  
10    up on January 1st, 2018, and been all better; or Dr. Taylor,  
11    Dr. Eaton, the Hopkins, the medical records that all show that  
12    that's not what happened; that he was injured, and that his  
13    injuries haven't gone away.

14          So how do you evaluate Dr. Kutsy's opinions? Well, again,  
15    Judge Pechman, in her wisdom, gives you some guidance.

16          This is Instruction No. 10, and Judge Pechman tells you,  
17    "In deciding the facts of this case, you may have to decide  
18    which testimony to believe and which testimony not to believe.  
19    You may believe everything a witness says, or none of it. In  
20    considering the testimony, you may take into account," and then  
21    she gives you a bunch of factors, and I want to talk about a  
22    couple of these factors.

23          The first factor is the opportunity and ability of the  
24    witness to see or hear or know the things testified to.

25          So you heard that Dr. Kutsy has never even met Mr. Hopkins,

1 let alone examined him. So you have Dr. Eaton and Dr. Taylor,  
2 who, between the two of them, had dozens and dozens of visits  
3 with Mr. Hopkins. And do you remember Dr. Eaton's testimony?  
4 It probably seems like a long time ago, but if you remember  
5 Dr. Eaton's testimony, what she said was, "The day I know my  
6 patient the best is the day I discharge them, because every time  
7 you meet with them, you learn."

8 And you don't just have Dr. Eaton and Dr. Taylor. You also  
9 have Dr. Weakland, and you have the physical therapy notes from  
10 all those other physical therapists. They knew Mr. Hopkins  
11 well. They worked with him day in and day out. They did all  
12 kinds of objective tests. And if you look at the -- if you have  
13 any doubt about this, look at the physical therapy notes, the  
14 dozens and dozens of notes. They're doing all kinds of tests.  
15 And you heard Dr. Eaton say, "The tests always correlated with  
16 what he was telling us, we never doubted him, we found him to be  
17 honest and truthful." That is the greater weight of the  
18 testimony you apply; number one, the opportunity and ability to  
19 see or hear the things they testified to. The fact that these  
20 people all had close, intimate contact with Mr. Hopkins, and  
21 Dr. Kutsy didn't, should be important.

22 Now, another factor here is No. 4, the witness's interest  
23 in the outcome of the case, if any.

24 Dr. Kutsy makes over \$600,000 testifying on behalf of  
25 insurance companies. Now, compare that to Dr. Taylor or

1 Ms. Eaton. They have nothing to gain by this. Whether you  
2 agree with them or don't agree with them, they're just going to  
3 go about seeing their patients.

4 Now, meanwhile, Dr. Kutsy has a big interest in how this  
5 case comes out. If you believe him, they will hire him again,  
6 and that is an interest in the outcome of this case. And this  
7 isn't theoretical. You saw the example in the record, where  
8 Cliff Wilson, that defense attorney that they originally hired,  
9 he said, "Well, there was a case where we hired Ms. Reif, and  
10 the case didn't turn out very well, so I'm not sure if we should  
11 use her." So Dr. Kutsy has \$600,000 worth of reasons for how he  
12 wants the outcome of this case.

13 Number 5 is bias, what bias or prejudice did they show?  
14 Well, you know the bias of Dr. Kutsy. On the other hand, you've  
15 got Dr. Taylor, Ms. Eaton, these other witnesses, there's no  
16 bias. They're just in here telling what happened with their  
17 patient.

18 But Dr. Kutsy, on the other hand, he regularly works for  
19 insurance companies. And you heard him. He gets hired. He  
20 makes \$600,000 a year working for insurance companies, and a  
21 high percentage of the time -- he told you this yesterday, he  
22 was reluctant to tell you -- but he told you, yesterday, a high  
23 percent of the time when he gets hired, he disagrees with the  
24 diagnosis of the treating doctors, the doctors who actually are  
25 going to help the patient.

1 Dr. Kutsy has one job, and that is to keep his job. As  
2 long as he keeps saying that everybody is better in three  
3 months, that the treating doctors are wrong, that the injury was  
4 minimal, that the person didn't suffer a concussion, despite  
5 what the providers say, as long as he keeps saying that, there  
6 will never be a shortage of insurance companies that are willing  
7 to hire him, and he will keep on earning \$600,000 just to parrot  
8 the same opinion in every case.

9 You also saw the bias in the real time, live on the Zoom  
10 trial. Remember he tried to tell you, at the beginning of his  
11 testimony with Mr. Harris, he said, "Well, one of the reasons  
12 that we know Mr. Hopkins didn't have a concussion is because no  
13 one diagnosed him within 48 hours." And on direct, Mr. Harris  
14 had him talk about Dr. Taylor, six weeks later, diagnosing  
15 concussion. But what he didn't mention, even though he knew  
16 about it, was that Dr. Weakland, in fact, had diagnosed a  
17 concussion, and had done it within 48 hours.

18 So when presented with that by my colleague, Mr. Gahan,  
19 what did he say? He said, "Well, the record isn't that clear.  
20 It's not that clear if Dr. Weakland meant a concussion because  
21 of the collision in 2016, or if she was just referencing a  
22 historical concussion."

23 But that is not what the record shows. You all have seen  
24 this. This is in Exhibit 7-2, and it could not be more clear.  
25 "AP," you know what that means. "Assessment plan." The

1 assessment was, "concussion injury of brain, personal history of  
2 traumatic brain injury." Dr. Weakland put both. The diagnosis  
3 here was concussion, and this was within 48 hours, and you saw  
4 Dr. Kutsy try to ignore that, and then try to muddy the waters.

5 Also, remember, on redirect, Mr. Harris had him say that it  
6 showed he was walking within normal limits and that he had no  
7 balance issues on that visit with Dr. Weakland. He, sort of,  
8 implied in his testimony that, "Well, that must have come up  
9 later," but that's not what this record shows. If you look at  
10 Exhibit 7-1, it says, "Balance not tested, as patient off  
11 balance with standing and with eyes closed, holds on to wall."  
12 Dr. Kutsy had these records, but he showed his bias in real  
13 time.

14 Finally, the reasonableness of the witness's testimony in  
15 light of all the evidence. So you have to decide the  
16 reasonableness. That means use your common sense. Does it make  
17 sense that, after all he went through, he woke up on January  
18 1st, 2018, and was cured? It makes no sense.

19 Does it also make any sense, other things he said, like,  
20 "We know he's not hurt because there was a gap in treatment"?  
21 So that's what he said. If you look back at your notes, he  
22 said, well, because he didn't go to the doctor on Sunday, when  
23 the doctor's office was closed, that means he's not injured.

24 Or the fact that there's times when the PT said, "Yeah, go  
25 ahead and go on vacation. Do your physical therapy at home."

1 We all know that you can have gaps in treatment. That doesn't  
2 mean you aren't hurt. It just means there's a period of time  
3 when you're not going to the doctor. If what Dr. Kutsy was  
4 saying was true, that every time there's a gap in treatment,  
5 that means people aren't really injured, that means that  
6 everyone out there who suffered a personal injury and wasn't  
7 able to go to the doctor during COVID times, that they're going  
8 to be able to say, in a courtroom, Well, they must not have been  
9 hurt because there's this gap in treatment for months, where  
10 they didn't get to see the doctor.

11 It doesn't make any sense, and Judge Pechman tells you that  
12 you're allowed to look at the reasonableness of the witness's  
13 testimony in light of all the other evidence.

14 Now I want to turn to the other claims in the case.

15 Your Honor, it's 10:30. Do you want me to keep going here?

16 THE COURT: I think what I'd like to do is have us  
17 take our 15-minute break. I need to rest the court reporter,  
18 and we've now been at it for an hour and a half here.

19 So ladies and gentlemen, please take your 15-minute break.  
20 You can be excused to the jury room, and we'll be back with you  
21 at 10:45.

22 THE FOLLOWING PROCEEDINGS WERE HELD  
23 OUTSIDE THE PRESENCE OF THE JURY:

24 THE CLERK: Your Honor, they are all in the jury room.

25 THE COURT: Okay. Mr. Wampold, can you tell me about

1 how much more you have here?

2 MR. WAMPOLD: I've got about 25 minutes left, Your  
3 Honor.

4 THE COURT: All right.

5 Then, Mr. Harris, we'll start with you -- Mr. Cogswell,  
6 would you talk with the jurors, before you bring them back in,  
7 to see if their lunch is delayed, whether that causes any  
8 difficulty for them.

9 THE CLERK: Yes, Your Honor.

10 THE COURT: I'm just trying to figure out what the  
11 options are, whether we should break again or push on through.

12 Mr. Wampold, have you timed your rebuttal?

13 MR. WAMPOLD: We'll be about 30 minutes, Your Honor.

14 THE COURT: Okay. Let's take our break, please.

15 (Court in recess 10:32 a.m. to 10:44 a.m.)

16 THE COURT: All right. Let's bring the jury back in,  
17 please.

18 THE CLERK: They are on their way.

19 THE COURT: Do we have everyone?

20 THE CLERK: I think we are waiting for one more to  
21 connect.

22 THE CLERK: Everybody is here, Your Honor.

23 THE FOLLOWING PROCEEDINGS WERE HELD  
24 IN THE PRESENCE OF THE JURY:

25 THE COURT: Mr. Wampold, you may continue.



1 MR. WAMPOLD: Thank you, Your Honor.

2 So now I want to turn to the other claims in the case, and  
3 these claims all have to do with how Integon handled  
4 Mr. Hopkins' insurance claim.

5 And the first thing that probably crosses your mind, as you  
6 listened to all of the instructions, is that all of these claims  
7 have different names, and there's a lot of them. But it's all  
8 based on similar conduct. And why is that? Why does the law  
9 prohibit similar conduct in so many different ways? Why does  
10 the law provide policyholders with so many different claims when  
11 they're mistreated by insurance companies? And the answers are  
12 actually in the instructions themselves.

13 You have Instruction No. 19. This is not Instruction No.  
14 19, but you've got Instruction No. 19, which lists the laws that  
15 insurance companies must adhere to if they choose to do business  
16 here in Washington.

17 And you see some very unique language for the business of  
18 insurance, and this says, "A single violation of a statute or  
19 regulation relating to the business of insurance is an unfair or  
20 deceptive act or practice. A violation of these statutes and  
21 administrative rules also affects the public interest."

22 And what does that tell us? What it tells us is that the  
23 reason there are so many regulations and laws for policyholders  
24 is because this doesn't just affect the policyholders -- it  
25 doesn't just affect Daniel Hopkins -- it affects the public

1 interest.

2 What the instructions are getting at is that this affects  
3 the public as a whole. And so when an insurance company takes  
4 advantage of its policyholders, it affects all of us. The  
5 public relies on insurance for protection when tragedy strikes,  
6 and because of that, we need insurance companies to keep their  
7 promise; not use their vastly unequal bargaining power to bully  
8 policyholders, or evaluate claims in a way that protects their  
9 interests, not policyholders.

10 And just like violation of these laws affect the public  
11 interests are the enforcement of the laws. And when they are  
12 held accountable here, like in a case like this, the verdict  
13 resounds everywhere, and that is what public interest means, and  
14 that is why the law provides so many different remedies, to make  
15 sure that insurance companies behave properly, because when they  
16 don't, it affects the public interest.

17 And it may seem daunting. With all of these claims, you  
18 may have gotten anxious as you listened to the instructions, but  
19 I think I can simplify them for you.

20 And, basically, what these instructions explain is that  
21 when insurance companies violate the statutes and the  
22 regulations and the behavior that Judge Pechman has instructed  
23 you, that you should find in Mr. Hopkins' favor on those claims,  
24 and I'll explain that, but that's the basic concept.

25 So with that in mind, let's turn to our first claim that

1 deals with Integon's conduct, and that's the violation of the  
2 Consumer Protection Act, and this is Instruction No. 18 on the  
3 CPA. And again there's that phrase, "the act or practice  
4 affects the public interest." In that same vein, one of the  
5 unique aspects of this instruction is that you are the enforcers  
6 here of a Consumer Protection Act violation. Sometimes that's  
7 the Attorney General's Office that enforces violations of the  
8 CPA, but, in this setting, these types of violations, it's you.  
9 And it makes sense to have members of the community be the ones  
10 to enforce these Consumer Protection Act violations.

11 So Instruction No. 19 explains that, "A violation, if any,  
12 of one or more of the following statutory or regulatory  
13 requirements is a failure to provide benefits: An unfair or  
14 deceptive act or practice in the business of insurance under the  
15 Consumer Protection Act."

16 So, basically, when you violate these rules, then you are  
17 violating the Consumer Protection Act. That's what this says,  
18 and this is consistent.

19 When Mr. Strzelec testified, he explained that these were  
20 standards in the industry for how insurance companies are  
21 supposed to behave. But now you know, from reading your  
22 instructions, that these are all based on laws.

23 I went ahead and wrote in the numbers of each law that  
24 backs up these rules.

25 So they aren't just industry standards, they're also law.

1 And, basically, what this says is, "A violation, if any, of  
2 one or more of the statutory or regulatory requirements is a  
3 violation of the Consumer Protection Act."

4 So what this sentence means is, we don't have to prove all  
5 of the violations that Mr. Strzelec went over. We just have to  
6 prove any of them. If you find that they violated any of these  
7 rules, then you find that Integon violated the Consumer  
8 Protection Act.

9 So when you're going through these different rules, if  
10 somebody back in the jury room says, Well, I'm not sure they  
11 committed this one, I agree they committed that one, you remind  
12 them that all they have to do for violation of the Consumer  
13 Protection Act is find that any of the rules has been violated.

14 Now, the same is true for the Insurance Fair Conduct Act,  
15 the next claim on your verdict form.

16 A violation of the Insurance Fair Conduct Act is  
17 established if we prove that Integon unreasonably denied  
18 benefits. That's number one there.

19 Now, we know, in this case, that Integon denied the  
20 benefits. You heard he was in a 2016 accident. Everyone agrees  
21 he was not fairly compensated, and they have not provided him  
22 any benefits. So the question is whether the denial was  
23 unreasonable. That's, really, the question for you.

24 And in Washington, reasonableness is defined by enacting  
25 these rules that we've discussed this whole trial. So if you

1 find that they've violated those rules, that is an unreasonable  
2 denial of benefits.

3 The next claim is a breach of the duty of good faith, and  
4 what this says here, in Instruction No. 23, is, the insurer must  
5 give equal consideration to its insureds' interests and its own  
6 interests, and an insurer who does not deal fairly with its  
7 insureds or who does not give equal consideration to its  
8 insureds' interests fails to act in good faith.

9 And, finally -- and you'll see, too, that, for good faith,  
10 it explains that "a violation of any of the statutes or  
11 regulations is a violation of good faith." And it makes sense  
12 because, again, the concept is to protect the public because of  
13 the unequal bargaining power of the insurance company.

14 Finally, if you turn to negligence, this is Instruction  
15 No. 29, and it says, "The violation, if any, of a statute or  
16 administrative rule is not necessarily negligence, but may be  
17 considered by you as evidence in determining negligence."

18 Again, what this is saying is that if you find that they've  
19 violated these rules and statutes and regulations, then that is  
20 evidence of what a reasonable insurance company would do. So a  
21 violation of any of those rules should be considered as  
22 negligence.

23 So, basically, it's very simple at the end of the day,  
24 which is, if you find that the insurance company violated these  
25 rules, you should find for us on all four of these claims.

1 And I believe we've proved that to you by a preponderance  
2 of the evidence. We provided you the testimony of  
3 Mr. Strzelec -- and I know he was on the stand for a long time,  
4 and I promise I won't repeat everything he said -- but basically  
5 what he explained was how this claim, following the law, should  
6 have been handled, which is, as soon as they understood that  
7 there was this claim, they should have been in a position to  
8 evaluate it. And he says at the beginning of the claim, they  
9 were going down the right track.

10 This is Christina May from February 6th of 2018, and she  
11 says, "If the injury complaint is substantiated, it's very  
12 possible this case could potentially be worth the policy limits,  
13 depending on the severity of the balance and vertigo issues."

14 So basically what Mr. Strzelec is saying is, yeah, she  
15 recognized that if there's proof that the gravitational vertigo  
16 he's got was caused by the accident, was permanent, and was  
17 seriously affecting his life, they need to pay limits.

18 Then they give it to a different adjuster, and that  
19 adjuster also writes down -- she has a conversation with  
20 Ms. Rosato, and she understands that Dr. Taylor is saying this  
21 is permanent, it is not going to improve. And basically they  
22 have a conversation, and Ms. Rosato says, "Yeah, I'll outline in  
23 the letter what Dr. Taylor had to say, and I'll give you all of  
24 the backup, all of the substantiation," and Ms. Rosato did that.  
25 And you'll have this exhibit, 2-22. But Ms. Rosato really walks

1 through all of his injuries and all the objective testing  
2 they've done to show the injuries and all the treatment, and  
3 says, "In light of the time that has passed since the collision,  
4 and the fact that Dan underwent regular physical therapy  
5 treatments for a year and a half but is still experiencing  
6 gravitational vertigo, Dr. Taylor says that Dan's vertigo will  
7 not improve any further," and demands limits.

8 Mr. Strzelec explained, at this point, that a reasonable  
9 insurance company has an obligation to look at that and say,  
10 Okay, what evidence do we have before us? We've got the  
11 evidence of what Dr. Taylor says in her records, we've got the  
12 evidence of what is reported, what their opinion is. You've got  
13 all of the evidence, all of the physical therapy notes. So if  
14 we take that injury, and we treat them with equal consideration,  
15 and go through all of these damages and really analyze, you  
16 know, what would a jury do with this, what you would realize,  
17 from the analysis that we did this morning, is that this claim  
18 is worth way more than the \$250,000, and what they should have  
19 done was paid limits.

20 And this is a record you may not have seen yet. This is  
21 Exhibit 2-26. But, basically, this is an email from Mary Gordon  
22 to her boss, and the truth is, on April 17th of 2018, she had a  
23 pretty good understanding of what Dan -- Mr. Hopkins had  
24 experienced. She understood that he had a mild concussion, that  
25 afterwards had post-concussive syndrome, he had an inner ear

1 disturbance resulting in gravitational vertigo, he had  
2 headaches, he had cervical strain. She really understood, at  
3 this point, what his injuries were. So if we look at the rules  
4 here, if you give equal consideration, number one; if you  
5 reasonably evaluate, number two; if you -- what you need to do  
6 is do No. 4, which is makes a prompt, fair, and reasonable  
7 offer, which would have been to pay the limits.

8 But we know that's not what she did. Instead, what she did  
9 was, she did what's not allowed, and she just speculated,  
10 speculated that it wasn't permanent, with no medical evidence;  
11 assumed that, actually, this wasn't affecting his life, even  
12 though it was, and did a low-ball offer.

13 Now, she claims that she did all of that, even though she's  
14 not a doctor and she didn't consult a doctor and she didn't  
15 consult a nurse -- she said she did that because she thought,  
16 based on this one record, that there was some evidence that he  
17 had had these vertigo issues before the collision, that he was  
18 experiencing the same problems he is now before the collision.

19 And then we asked her, on the stand, "Well, what about this  
20 record?" I mean, this is pretty important to that analysis,  
21 like, if you're going to conclude that he was experiencing this  
22 before, what about the fact that there is this exhibit, 34-2,  
23 that says that, you know, he had a full checkup in December of  
24 2015, and it showed he had no fatigue or weakness, no vision or  
25 hearing problems, no problem with headaches, that his mood had



1 been good, sleeping well, no irritability, no dizziness. What  
2 about that record?

3 Now, very important -- this is, obviously, a very important  
4 record, and what Ms. Gordon said on the stand -- and you heard  
5 her -- she said, "I didn't have that."

6 So here's a fact, right? She either had it or didn't, and  
7 we can prove she had. We know she had it because she sent it to  
8 Kutsy. It was part of the demand package, and then she sent it  
9 to Kutsy. Why would she get on the stand and say that? Why  
10 would she get on the stand and take the risk and say, "I didn't  
11 have that"? The reason is because she knows it's devastating to  
12 what they ended up doing.

13 For them to speculate that he was having these problems  
14 before, when they had clear proof that, in December of 2015, he  
15 had a full physical evaluation and was not having these  
16 problems. She knows that that is absolutely devastating, and  
17 makes her refusal to give the money clear, which is exactly what  
18 she was doing, which was, We just don't want to give the money.  
19 Yeah, you deserve it, yeah, you had this new injury, yeah, it's  
20 really affecting your life, but we don't want to give you the  
21 money.

22 So now, at that point, there's, obviously, a standoff,  
23 because Ms. Rosato is making clear he's not going to accept  
24 less. He deserves the limits. He's not going to take your  
25 \$17,000.

1           So what does Ms. Gordon do at that point? Does she just  
2   call around to say, Hey, who is a reputable neurologist who can  
3   answer this discrete question for me? Who is a really good  
4   neurologist in town? Maybe call some friends in Seattle, "Who  
5   do you know who is a good neurologist?" No, she calls a defense  
6   attorney, the defense attorney who represents Integon Insurance  
7   Company, and asks him for a referral, and, basically, she says,  
8   "Yeah, we want a records review," and he says, quite  
9   intelligently, quote -- the last two sentences -- "He has never  
10   been able to get someone to provide an opinion based on a record  
11   review. Records won't show them what they need in order to  
12   provide an opinion."

13           And that makes sense. You heard Dr. Taylor explain how  
14   important it was for her to (sound interruption) --

15           Does everybody hear that noise? Okay.

16           Your Honor, is there somebody that can mute?

17           Okay. Great.

18           You heard Dr. Taylor explain that it was very important for  
19   her to come up with her diagnosis to actually do a physical exam  
20   on Mr. Hopkins and to really understand his history so it makes  
21   sense.

22           So then Ms. Gordon says, "Asked if there will be a downside  
23   to doing the in-person exam," and then she says, "It will likely  
24   go into arbitration or litigation. Not really, other than if we  
25   do an IME, we have to share it with him. If we do a records

1 review, we can just hide it."

2 That is not showing equal consideration for Mr. Hopkins.  
3 That is assuming this is going to go to trial. And it explains  
4 what Ms. Gordon is up to here. She is not trying to get to the  
5 truth. She doesn't really have an honest question about his  
6 situation. She actually just wants to set Integon up in the  
7 best possible situation to go to trial. And you heard  
8 Mr. Strzelec say that's not fair, that's not reasonable, that's  
9 not acting in good faith.

10 And now what happens is -- and one of you asked a great  
11 question about the time frame, and you've got Instruction No. 28  
12 that explains the time frames, and they've now violated all the  
13 time frames.

14 So that happens in May. They don't even hire Dr. Kutsy,  
15 for the first time, until August, and they don't even report  
16 back to Ms. Rosato until October. They violate all these  
17 regulations about time. And you have these here. Here's  
18 Ms. Rosato June 22nd, over a month later, "What's the status?"  
19 July 27th, a month has gone by, "What's the status?" August  
20 now --

21 So this note -- again, I don't know that we showed it to  
22 you, and if we did, we haven't focused on it enough, but I think  
23 it's really important. This is Exhibit 1-16. "Received email  
24 from insured's attorney, Ann Rosato. She said it's been over  
25 three months since we told her we were going to a records

1 review, and the delay is unacceptable. She will wait two more  
2 weeks, and then proceed with legal proceedings. Never received  
3 fax from Rockwell. Will move forward with Dr. Kutsy if defense  
4 counsel is okay with this doctor."

5 So she wants to make sure not, Hey, is Dr. Kutsy a  
6 reasonable person who is objective? She wants to know, "Is he  
7 acceptable to the defense attorney, the lawyer that's going to  
8 defend us? Is this somebody we can rely on in a trial," just  
9 like this. That's what she's asking, and that's not fair,  
10 that's not reasonable, and that's not acting with equal  
11 consideration of Mr. Hopkins' interests.

12 And she, basically, then just throws up her hands. "It's  
13 unlikely we'll get a response in the next two weeks, so I want  
14 to make sure he is okay with this doctor before we send out the  
15 file material."

16 So what she's saying here -- again, I think this is a very  
17 important exhibit. She's, basically, saying, Yeah, you know, we  
18 offered \$17,000. It's probably not reasonable. We also know  
19 we've blown all the deadlines. We're going to get sued, so  
20 let's just make sure Dr. Kutsy is someone we can rely on at  
21 trial, because we're going to end up right where we are.

22 That is exactly what the insurance company did, and that is  
23 not fair and that is not reasonable, and that violates,  
24 basically, all of these rules, and they did violate all of these  
25 rules during this time frame.

1           They didn't give equal consideration to the insured's  
2     interest; they didn't reasonably evaluate; they denied and  
3     reduced benefits without a reasonable justification; they didn't  
4     make a prompt, fair, and reasonable offer; they didn't  
5     reasonably investigate; they didn't update the insured about the  
6     claim every 30 days and respond to timely communications within  
7     10 days. Instead, what they did was they forced us to all be  
8     here, and that, also, is a violation of the insurance rules and  
9     regulations.

10           So now, when you're asked, do you find that Integon  
11     violated the Consumer Protection Act? We think the answer  
12     should be, "yes," because we've proven all of these. We only  
13     need to prove one, but we've proven all of these.

14           The Insurance Fair Conduct Act; same thing, the answer  
15     should be "yes."

16           Did they fail to act in good faith? Yes.

17           Do you find they acted negligently? Yes.

18           Now, I'm going to spend the last bit of my time talking  
19     about the damages that were caused by Integon's treatment of  
20     Mr. Hopkins, because that's what answer you have to put in for  
21     each one of these. What do you find the amount of damages?

22           For the Consumer Protection Act, that is the loss or  
23     diminished assets or property.

24           So, here, the diminished assets or property is, he had to  
25     pay \$931 that he didn't have -- right? -- because they paid

1 \$10,000 in medical bills, but he had to pay \$931 of his own, and  
2 he had to pay -- you heard -- \$16,000 just to get to this trial.  
3 So that is the amount we think you should put in this column.  
4 We think the number should be \$16,931.

5 Insurance Fair Conduct Act, what are the total amount of  
6 damages for that? Well, he gets the same damages, the loss or  
7 diminished assets or property, but he also gets emotional  
8 distress damages. So you have to ask yourself, what's the fair  
9 trade value for making up for that harm?

10 Again, there's been an injustice. You know that. There's  
11 been an injustice, and the scales of justice are out of  
12 alignment. How much money do you have to put back for what they  
13 put him through? The insult; treating him like an adversary  
14 when they're supposed to treat him like a customer. What is the  
15 value to a citizen when a corporation abuses its power? What is  
16 the value of having to sit through this trial, have your doctors  
17 hauled in, in a public courtroom, imply that you're a liar?

18 You heard from Kevin Moore, Sarah Hopkins, Irene Hopkins,  
19 how horrible this has been for him to have his insurance company  
20 treat him like the enemy. You saw on the stand how horrible it  
21 was to get cross-examined by Mr. Harris, to have his doctors  
22 questioned, to have his own veracity questioned. This is his  
23 own insurance company. All of that is compensable. And,  
24 again, you will decide how much to put on the scales of justice  
25 for that harm, but we believe that that harm should be a million

1 dollars, and we would ask that, for the Insurance Fair Conduct  
2 Act, you put \$1,116,931 on that line.

3 Failure to act in good faith. Again, the damages are  
4 really the same. The emotional distress and the lost/diminished  
5 assets, we believe that number should be \$1,116,931.

6 The negligence claim, what are the damages for that?  
7 Again, the same damages, and again, we think you ought to put  
8 that same amount down, \$1,116,931.

9 So then it asks you to total the damages, and the reason  
10 this is really important is, no one, including us, wants Integon  
11 to have to pay for more than you've awarded. So to be clear,  
12 what we're asking for this part of claim, how they handled the  
13 insurance claim, to put in a total of \$1,016,931. Basically,  
14 the other damages are duplicative, so the total here should just  
15 be \$1,016,931.

16 I'm just about done, but I want to say, at the end, thank  
17 you, all, for your service. You know this case is important for  
18 Mr. Hopkins, it's important for the public interest, and you are  
19 acting to protect that public interest. You are here to set  
20 standards, to enforce the laws, and to hold insurance companies  
21 accountable.

22 What you do in deliberations will be on record in this  
23 courthouse forever, and we would ask that you deliver justice  
24 for Mr. Hopkins and set things right, please.

25 Thank you.

1 THE COURT: All right, ladies and gentlemen. How  
2 about let's stand up, take a little stretch, shake it out so we  
3 can turn our kind attention to Mr. Harris in a moment.

4 (Off the record 11:12 to 11:30 a.m.)

5 THE COURT: All right, ladies and gentlemen. Please  
6 give your kind attention to Mr. Harris. He has the privilege of  
7 giving the closing argument on behalf of Integon.

8 Mr. Harris?

9 MR. HARRIS: Thank you, Your Honor. Can I share my  
10 screen?

11 THE COURT: Certainly.

12 DEFENDANT'S CLOSING ARGUMENT

13 MR. HARRIS: Can everybody see that?

14 May it please the court, counsel, ladies and gentlemen of  
15 the jury.

16 I want to start, similar to where Mr. Wampold started, by  
17 thanking you for your time, your dedication, and your attention  
18 during this trial.

19 You heard from Judge Pechman -- I think it was on Friday --  
20 that this trial made her more nervous than any other trial she  
21 had during her long career. I'll be honest. I felt the same  
22 way.

23 When we found out a little over a month ago that we'd be  
24 doing this trial by Zoom, I didn't know what to expect, but I  
25 knew that the only way this would work is if everybody bought



1 in. If everybody was committed to this, they showed up, they  
2 paid attention, and did their role. And I have to say, I've  
3 been pleasantly surprised by the way this has gone, and your  
4 attention to the details and your participation in this case, I  
5 just want to start by saying thank you for your time and  
6 dedication here.

7 At the beginning of this trial, I told you this case is  
8 about striving to do our best, and that Integon strived to do  
9 its best in its evaluation and handling of Mr. Hopkins' UIM  
10 claim.

11 Now, in this case, plaintiff's counsel and their witnesses  
12 have asked you to hold Integon to the wrong standard. They've  
13 asked you to check every box, dot every i and cross every t.

14 While it has a corporate name, Integon is run by people.  
15 It is people that operate the company, people that investigate  
16 and administer claims, people whose sole job it is to come up  
17 with an evaluation and settlement of the appropriate claim at  
18 the appropriate value. Like all of us, they're not always  
19 perfect. It's for that reason that the law doesn't require them  
20 to be perfect. It only requires them to be reasonable and to  
21 not place their interests over those of their customers.

22 Now, despite the efforts to tap into your prejudice and  
23 sympathy for Mr. Hopkins in this case, you swore an oath, at the  
24 beginning of this case, that you would decide it based on the  
25 facts and the evidence, not the arguments of David and Goliath,

1 as Mr. Wampold alluded to during his summation, and by not  
2 appealing to your passions, as plaintiffs have tried to do  
3 repeatedly throughout this trial, but based on the facts and the  
4 evidence that you heard during the course of this trial.

5 One of the jury instructions that Judge Pechman provided to  
6 you in this case talks about prejudice, and it says that all  
7 parties are equal before the law. And while you may feel some  
8 compassion for Mr. Hopkins and his family, you must decide this  
9 case based on the same consideration for my client that you show  
10 for him. Our system of justice depends on it, regardless of who  
11 the parties are, that they are being treated fairly and equally  
12 in the eyes of the law.

13 And Mr. Wampold also mentioned this jury instruction during  
14 his summation, and I want to bring it up again to talk about it  
15 from our perspective. Because it says the plaintiff has the  
16 burden of proving their case by a preponderance of the evidence.  
17 That means you must believe that all of the elements, for each  
18 of their claims, have been proven on a more-probable-than-not  
19 basis. And if you find that some of those elements have not  
20 been proven, for some of those claims, you must return a verdict  
21 in favor of my client.

22 Now, remember the issues that you're being asked to decide.  
23 I showed this to you earlier on, and this, really, relates to  
24 some of the extra-contractual claims. I'll talk about the UM  
25 benefits and the UIM claim later on.

1           The first question, really, asks you, but did Integon fail  
2     to use reasonable care? Did my client act in a manner that was  
3     unreasonable, frivolous, or unfounded? Did my client  
4     unreasonably deny the payment of benefits?

5           These all really come down to the same question. Was  
6     Integon reasonable in its decision to not agree to pay the  
7     \$250,000 demand in addition to the \$10,000 in PIP, the \$25,000  
8     from Progressive, and the \$1,064 in repair costs to Mr. Hopkins'  
9     car.

10          You've seen no evidence in this case that plaintiff ever  
11     offered to settle for below \$250,000. So that was, really, the  
12     question that was being asked: Were they willing to pay that  
13     amount, or were they going to try to evaluate it and then settle  
14     it for a reasonable sum?

15          Now, you heard from both of the experts in this case,  
16     Mr. Strzelec and Mr. Hight. My client was not required to be  
17     perfect. It was not required to do everything possible. It was  
18     only required to act reasonably.

19          And my client had a basis to investigate whether  
20     plaintiff's injuries were related to the 2011 accident or the  
21     2016 minor, low-speed car accident that we're here for today.

22          Now I want to highlight this jury instruction for you. It  
23     talks about the reasonableness of the claim handling, and it  
24     tells you that when looking at my client's actions in this case,  
25     you must judge them not necessarily from what you heard during

1 this trial or what occurred with regard to the claim after the  
2 lawsuit was filed, but you have to look at it based on the  
3 information that was available at that time and based on what  
4 occurred at that time.

5 So if a report or a document was not provided to my client  
6 at the time they made their decision, and was never considered  
7 by them during their pre-suit investigation and evaluation of  
8 the claim, you may not consider it for the purposes of judging  
9 the reasonableness of my client's actions.

10 For example, this is a report from Dr. Taylor. You've seen  
11 it. It's dated September 11th, 2018, which is right before this  
12 lawsuit was filed.

13 During the course of this trial, you've heard no evidence  
14 that Integon ever received a copy of this document prior to the  
15 filing of this lawsuit. There's no record of it in the claim  
16 file, there's no mention of it by Dr. Kutsy, there's no record  
17 or email or a letter by anybody, including plaintiff's counsel,  
18 indicating that this document was provided to my client during  
19 the course of their investigation.

20 For them to suggest, during the course of this trial, that  
21 Integon's decision regarding the UIM claim and the value of it  
22 was wrong based on this record, is just false. It defies logic,  
23 common sense, and defies the law, as you saw in the jury  
24 instruction I just showed you.

25 What the evidence does show is that this was the last

1 record, that was provided to my client during its evaluation,  
2 from Dr. Taylor. This is the April 20th, 2017, report.

3 Ms. Gordon specifically noted this record in her  
4 evaluation, and Dr. Kutsy evaluated and discussed, in his  
5 report, that this was the last update from the neurologist  
6 regarding the plaintiff's condition.

7 It indicates that the plaintiff was still making progress  
8 with his vertigo. It reports that all of his symptoms had  
9 resolved, including his headaches, his fatigue, his cognitive  
10 issues. All had either resolved or gotten all the way back to  
11 baseline.

12 Again, this is one year after the accident and right after  
13 Mr. Hopkins took his four-month trip to Panama.

14 This is another important instruction that I want you to  
15 look at, and it talks about the negligence standard, and it has  
16 a similar concept as what we just got done looking at in terms  
17 of reasonableness. It says, "Negligence is some act that a  
18 reasonably careful person would not do under the same or similar  
19 circumstances, or the failure to do some act that a reasonably  
20 careful person would not have done under the same or similar  
21 circumstances."

22 Again, we have to put ourselves in the position of the  
23 person in the same or similar circumstances. What did they  
24 know, when did they know it, and what did they do about it?

25 With regard to the IFCA claim, it has a similar concept as

1 the negligence claim, because it talks about this unreasonable  
2 denial of benefits.

3 Again, we look at the jury instruction regarding  
4 reasonableness, and we have to decide what did they know, when  
5 did they know it and what did they do in terms of their decision  
6 to offer benefits in this case. That's how it relates to the  
7 IFCA claim.

8 It's a similar standard. You can't  
9 Monday-morning-quarterback this. You can't go back and say  
10 hindsight is 2020. You have to look to see what did they know,  
11 and what did they do about it.

12 With regard to the CPA standards, I showed you this slide  
13 in opening, and we've talked about this extensively during the  
14 course of this trial, but it's worth noting again that all of  
15 these standards have this concept -- almost all these  
16 standards have this concept of reasonableness.

17 I'm going break these down for you.

18 The communication with the plaintiff, which is almost  
19 exclusively done through plaintiff's counsel, was done in a  
20 reasonable and prompt manner, but I'll explain that a little  
21 more later on.

22 The investigation performed by Integon in this case was  
23 reasonable, both in terms of the scope and timeliness of it.

24 Integon's efforts to settle this claim were prompt, fair,  
25 and equitable at all times. And as you've seen how plaintiff,

1 through his attorneys, were well aware of the UIM coverage that  
2 was available under the policy.

3 And, lastly, I'm going to show you how Integon did not  
4 force plaintiff to file this lawsuit by offering substantially  
5 less than the amounts ultimately recovered; not just did they  
6 offer lower than what was ultimately -- than what you decide was  
7 his damages from the accident, but did they offer substantially  
8 less than what was recovered? But, again, looking at this in  
9 terms of what did they know and when did they know it.

10 Based on the information that they had at this time, and  
11 based on the insistent and never-wavering demands by the  
12 plaintiff's counsel that Integon pay the \$250,000 policy limits,  
13 and nothing else, the answer to these questions is going to be  
14 yes, that they did act reasonably, and, no, they did not violate  
15 the CPA.

16 So let's go through the history of the claim, because  
17 Mr. Wampold went through, and he gave you, kind of, a cursory  
18 review of the timeline, but he left out some really important  
19 parts, so I want to go through and really do a detailed analysis  
20 of how this claim was handled.

21 So let's start with November 20th, 2017. By all accounts,  
22 this was the first time that the claim was submitted to Integon  
23 in terms of a request for UIM benefits.

24 A couple of days before this, plaintiff's counsel had  
25 resolved the claim with Progressive for the \$25,000 policy

1 limits, and only then were plaintiff's counsel in a position to  
2 then open up a UIM claim with Integon.

3 Up to this point, all of plaintiff's medical bills had been  
4 paid for by Integon under the PIP coverage.

5 So from November 20th, in terms of timeliness, we see the  
6 UIM claim opened the next day, and we see, the next day, calling  
7 the insured's attorney, trying to get ahold of them, trying to  
8 get more information.

9 Also that same day, calling them back, having a  
10 conversation, trying to get information, and trying to find out  
11 what was going on with this claim. This is prompt investigation  
12 to try to get to a position where this claim could be settled.

13 It was reported here -- this is when Integon learned that  
14 the plaintiff had settled the claim with Progressive for  
15 \$25,000, and Ms. Rosato indicated that she would be submitting a  
16 UIM demand in the next couple of months. There was a discussion  
17 about this, and Integon indicated that it would respond to the  
18 UIM demand once they had received it. Ms. Rosato understood.

19 This was a first, in a series of agreements, that showed  
20 the cooperation and coordination between plaintiff's counsel and  
21 Integon with regard to how the claim was going to be  
22 investigated, evaluated, and handled.

23 Following this telephone call, Integon sent a letter the  
24 same day, November 21st, the day after the UIM claim had been  
25 submitted, saying, "Thank you for your letter. We look forward



1 to working with you to evaluate your claim. Can you please send  
2 us your demand, along with a complete copy of the medical  
3 records you would like us to consider?" Again, showing this  
4 collaboration, agreement, the parties are on the same page in  
5 terms of how this claim is going to proceed forward.

6 And at this point in time, they're on the same page in  
7 terms of plaintiff would submit his UIM demand a few months  
8 later.

9 So this is a timeline. We're going to add to this as we go  
10 through, but we see, in 2017, November of 2017, a letter,  
11 response, phone call, letter in response to that letter.  
12 Timely, prompt investigation and communication.

13 Mr. Strzelec's testimony that Integon just sat back and  
14 waited and didn't do anything ignores the clear evidence in this  
15 case. As Mr. Wampold mentioned to you, that's something you can  
16 look at in terms of the credibility of witnesses. Did they  
17 provide accurate statements at all during the course of this  
18 case? I'll submit to you, and you've seen during the course of  
19 this trial, that Mr. Strzelec's testimony, in regards to Integon  
20 just sitting back and waiting, isn't true. That's not what  
21 happened, and we'll go through and we'll see why that's not  
22 true.

23 You also heard from Mr. Hight, who said this is common  
24 practice in the industry for the plaintiff's counsel to prepare  
25 a UIM demand to initiate these types of negotiations. And

1 there's no standard that requires an insurance company to go out  
2 and conduct its own investigation, to pull together the records  
3 in order to begin their process of evaluating the claim. They  
4 can wait for the UIM demand.

5 And in this case, specifically, not only was that a common  
6 standard of practice, but it was agreed upon. The parties  
7 agreed this is how it was going to proceed.

8 Mr. Strzelec's opinion that Integon acted unreasonably by  
9 reaching this agreement with the plaintiff's counsel and waiting  
10 for the UIM demand completely defies logic and is not supported  
11 by any of the facts in this case.

12 So the next time we see activity in this case is on  
13 February 6th, 2018, and it's about two and a half months later.  
14 By this point, we hadn't received the UIM demand yet, and  
15 Ms. Rosato called Integon and spoke with Ms. May, who had been  
16 assigned the claim.

17 And during this conversation, Ms. Rosato provided an update  
18 on Mr. Hopkins' condition; said, "He went through two rounds of  
19 cognitive testing and has deficits in executive functioning and  
20 doing complex tasks." Now, she's talking about the 2011  
21 accident here, and this is Ms. Rosato communicating to Integon  
22 that Mr. Hopkins has deficits in cognitive functioning and doing  
23 complex tasks from the 2011 injury.

24 "Due to the brain injury, he had to stop working as a  
25 marine mechanic and was not able to return. Continued to have

1 cognitive issues."

2 These are statements by the plaintiff's counsel to Integon,  
3 acknowledging that, from the 2011 accident, there were still  
4 deficits and cognitive issues that the plaintiff was suffering  
5 from.

6 She also indicates that Mr. Hopkins is set to see his  
7 doctor to determine if there's anything else that can be done  
8 with regard to his condition. But, again, no report from  
9 Dr. Taylor. The only report they had at this time was the April  
10 20th report from 2017. We'll see what happens a little bit  
11 later.

12 So the same day, Ms. May prepares the PEV analysis. We've  
13 heard about the PEV analysis during the course of this trial.  
14 You heard from Ms. Gordon that this analysis is intended to not  
15 give equal consideration but every consideration for the  
16 policyholder's version of the claim. Essentially, it assumes  
17 everything that is being said by the policyholder to Integon is  
18 accurate. They take everything at face value, and accept it as  
19 being true.

20 So it's a straight calculation of what amount, in total,  
21 would plaintiff likely be able to recover from Ms. Montes from  
22 the accident.

23 There are three notable aspects about the PEV analysis.  
24 The first and most notably is it has potential medical specials,  
25 and you'll see it's \$32,500 to \$50,500, which, as we know and as

1 we heard from Mr. Wampold, the actual medical costs are \$10,900  
2 and change. So this is three to five times over what the actual  
3 medical costs turned out to be.

4 Second, the PEV analysis doesn't include any offsets. It  
5 doesn't include a consideration of the \$10,000 in PIP or the  
6 \$25,000 from Progressive. It is a straight calculation saying  
7 what is the total value of this claim.

8 Third, it does not account for any of plaintiff's medical  
9 records, repair estimate, photos of the accident scene, or  
10 photos of the damage to the car. At this point, Ms. May had  
11 none of that information because she had not received the UIM  
12 demand or the medical records from the plaintiff's counsel.

13 And based on that, and as you heard Mr. Strzelec say, this  
14 was a good analysis, "Ms. May did a good job," those were his  
15 words, her range is \$111,000 to \$135,500.

16 So she also prepared what's called a case-reserve analysis,  
17 and you've heard about this. It has a separate purpose for what  
18 she's doing.

19 You heard Ms. Gordon testify that this is really looking at  
20 in terms of -- of an overall value of the case. So it factors  
21 in some of these offsets. So Ms. May still has the medical  
22 specials at three to five times what they actually are. She  
23 still doesn't have any medical bills, same day as her PEV  
24 analysis, but she factors in the offsets, and so she comes up  
25 with a settlement range for the UIM claim of \$79,203, and she

1 specifically notes, "I don't have any medical records at this  
2 time."

3 So based on Ms. May's analysis -- we heard Ms. Gordon  
4 testify -- the claim got moved over to the large-loss unit, got  
5 moved over to a unit of more experienced adjusters, people who  
6 were more equipped to handle this, and it was assigned to  
7 Ms. Gordon.

8 The very first thing that Ms. Gordon does is she calls  
9 plaintiff's counsel to get an update on treatment and status of  
10 the demand, which we saw before, Ms. Rosato had agreed to  
11 provide to Integon. During this call, Ms. Gordon specifically  
12 asked for prior medical records and a report from the  
13 neurologist regarding his current condition.

14 Once again, we see an agreement by plaintiff's counsel and  
15 Integon as to how the claim would be investigated and the  
16 settlement discussions initiated, as she said -- "she,"  
17 referring to Ms. Rosato -- "will put together all the  
18 information and send the demand."

19 We heard from Mr. Hight about this collaboration,  
20 cooperation between Integon and the plaintiff's counsel in this  
21 case, and how they worked together and kept each other informed  
22 of what was going on, to try to work together to settle this  
23 claim.

24 After she had this conversation with Ms. Rosato, Ms. Gordon  
25 sends an email confirming, "I am the adjuster. I'm looking

1 forward to working with you to resolve this claim." Again,  
2 being timely, being responsive, keeping the plaintiff's counsel  
3 informed of what was going on and how the claim was going to be  
4 progressing.

5 So here we've got the responsive letters in November of  
6 2017, and then we've got these series of letters in February of  
7 2018, phone calls, emails, letters, keeping each other informed  
8 of what's going on, and trying to coordinate getting the  
9 information that each side needs in order to evaluate the claim,  
10 and try to work together to effectuate a settlement.

11 Now, Ms. Gordon didn't just sit back and say, "Okay, well,  
12 I can wait for the UIM demand to come in. I don't have to do  
13 anything else" -- again, as Mr. Strzelec says, sitting back and  
14 waiting -- that's not what she did. She prepared an estimate,  
15 and she prepared her own evaluation with fresh eyes from  
16 Ms. May's evaluation.

17 By this point, Ms. Gordon was able to find more accurate  
18 estimates for the medical specials, so she knew that the  
19 medicals were closer to \$9,000 than to \$50,000, and she prepares  
20 an estimate based on that, as well as the generals, as well as  
21 the information she received from Ms. Rosato. But her general  
22 damages were fairly consistent with Ms. May -- which we'll see  
23 in a minute when I show you a comparison, side by side -- and  
24 her total range -- which both insurance experts agreed -- from  
25 Ms. May was a reasonable range, and she had a total of zero to

1 \$84,000, and she set the midpoint at \$42,000, and that was for  
2 the reserve. Again, her estimate of what it would probably take  
3 to resolve this case, because she acknowledged that this case  
4 could be up to \$84,000.

5 So, here, we look at the side-by-side estimates. We have  
6 Ms. May's on the left; we have Ms. Gordon's on the right. And  
7 this is the estimate -- again, you heard from Mr. Strzelec --  
8 was a good plan, was a good job by Ms. May. And what we see  
9 here is a striking similarity between a lot of these numbers.

10 You see that the good plan by Ms. May is not so different  
11 from Ms. Gordon's estimate in terms of the high-side value of  
12 the claim. You'll notice Ms. Gordon actually has a higher  
13 estimate for general damages. Ms. May is still using the  
14 \$32,000 to \$50,000 range. Really what we see is a wider range  
15 of the damages for the vertigo; acknowledgement by Ms. Gordon  
16 that she knew and that she was told by Ms. Rosato that  
17 Mr. Hopkins had these deficits and had some cognitive issues,  
18 and so she knew there was probably going to be a causation issue  
19 here, and she'd also heard that it may be permanent, but she  
20 didn't know, and she didn't have a report from a doctor saying  
21 that it was permanent at the time.

22 So she's giving a wide range. She's acknowledging that  
23 there's a lot of unknowns at this point. And, again, she  
24 doesn't have any of the medical records at this point in time,  
25 when she's doing this estimate. But it's a reflection -- there

1 is a number of factors -- and a high degree of difficulty for  
2 Ms. Gordon, using her professional judgment and discretion, when  
3 estimating a claim such as this one.

4 The reasonableness of Ms. Gordon's initial estimate is  
5 confirmed by this note, by Mr. Chodacki, which is her manager at  
6 the time. Again, not sitting back and waiting for a demand;  
7 preparing an evaluation that's then reviewed and approved by her  
8 supervisor. They were preparing the estimate based on the  
9 information they had at that time, to proactively evaluate the  
10 claim so that when the UIM demand came in, they would be  
11 prepared to respond in a prompt and timely manner.

12 You'll also remember Ms. Gordon's testimony about  
13 Mr. Chodacki. He was a regional manager on the West Coast for  
14 Farmers Insurance before he came to Integon, and he had a lot of  
15 experience with claims in Washington. He was very familiar with  
16 the laws of Washington, and Ms. Gordon relied on him and his  
17 knowledge and experience in handling claims in Washington.

18 You also heard Ms. Gordon specifically talk about how she  
19 and Mr. Chodacki regularly conferred about their claims and that  
20 they specifically talked about this claim on multiple occasions.

21 So that brings us to the UIM demand, March 26th, 2018. As  
22 we saw and as we heard during the course of this trial, it was  
23 not received until April 3rd, 2018, and plaintiff's counsel  
24 asked for the entire policy limit, \$250,000, which was two to  
25 two and a half times the estimate prepared by Ms. May and by



1 Ms. Gordon up until this point in time.

2 It was not until then that plaintiff's counsel had  
3 submitted the medical records as well, so now Ms. Gordon had the  
4 opportunity to review the medical records and prepare her  
5 evaluation based on those.

6 So, again, looking back at our timeline, we've got this  
7 initial communication in November, where there is an agreement  
8 that they're going to provide a UIM demand; there is subsequent  
9 conversations in early February, and going into later February,  
10 where, again, they're reconfirming their agreement and their  
11 plan -- their joint plan -- to investigate the claim by getting  
12 a demand, getting the medical records, and then working through  
13 the evaluation of it. And then that brings us to the demand,  
14 which was dated on the 26th of March but not received until the  
15 third of April.

16 So what we see after we get the demand is, Ms. Gordon gets  
17 to work. She reviews and summarizes the demand letter in her  
18 notes. She specifically notes a number of medical records that  
19 jump out to her, that you're going to recognize because you've  
20 seen these repeatedly throughout the course of this trial.

21 She specifically notes Dr. Taylor's first record of seeing  
22 Mr. Hopkins, where she diagnosed him with gravitational vertigo.  
23 She also noted Dr. Taylor's third visit, the last visit before  
24 this and the only record -- the last record from Dr. Taylor that  
25 was provided to Integon, which is the 4/20/17 record, where it's

1 noted that all of his symptoms had resolved, except for some of  
2 his vertigo. The vertigo had improved, and, hopefully, would  
3 couldn't to improve. She specifically noted the issue of  
4 permanency of the injury and the ambiguity in these records.  
5 She also accounted for the fact that plaintiff claimed that he  
6 would never return to his pre-collision status.

7 So she didn't discount these assertions, as Mr. Strzelec  
8 noted. She specifically included it in her evaluation as yet  
9 one of the factors she was looking at in preparing her  
10 evaluation.

11 And she also noted the record you've heard about a lot  
12 during the course of this trial, the September 1st, 2017, record  
13 from Cascade. You've heard excuses, you've heard explanations,  
14 you've heard allegations about whether this record is accurate  
15 or not, but you also heard from Dr. Eaton, and Ms. Emami is a  
16 well-respected certified physical therapist. Plaintiff offered  
17 you no evidence to undermine her credibility or the accuracy of  
18 her record, other than pure speculation and conjecture. We did  
19 not hear from Ms. Emami during the course of this trial.

20 So getting back to the jury instructions that I mentioned  
21 at the beginning, plaintiff had the burden of proof. They have  
22 not met their burden of proof to show that this record was  
23 wrong, was inaccurate, and they certainly haven't met their  
24 burden of proof to show that Ms. Gordon's reliance on this  
25 record was unreasonable.

1 The record and its meaning could not be more clear, which  
2 is why plaintiffs have gone to great lengths to discount it, but  
3 they've offered nothing, in terms of evidence, to disprove it.

4 So based on this record and the significant prior TBI from  
5 2011, Ms. Gordon realized that she's got two issues: Permanency  
6 and causation. And she further documents these issues in her  
7 evaluation on April 17th, 2018. She specifically notes that,  
8 "While plaintiff's counsel claims the vertigo is permanent, the  
9 last record from Dr. Taylor is inconclusive." Again, not taking  
10 someone's word for it, not speculating, but giving equal  
11 consideration to the evidence, to the medical records that are  
12 not entirely consistent with what she's hearing from plaintiff's  
13 counsel, and not entirely consistent with each other.

14 So make no mistake. Her evaluation was not just based on  
15 this record, though, it was based on this note that we talked  
16 about a little while ago, where she talked to Ms. Rosato, and  
17 Ms. Rosato specifically told her about deficits in executive  
18 functioning and doing complex tasks, and how he continued to  
19 have cognitive issues.

20 So though his vertigo, as claimed by the plaintiff, was  
21 permanent after the 2016 accident, she also has this admission,  
22 from the plaintiff's counsel, that he was having these issues  
23 before the accident. Again, inconsistencies that warranted  
24 further investigation.

25 We also heard about Dr. Weakland's record, and Mr. Wampold

1 showed this to you during his summation. This is the  
2 December 1st, 2015, record. They didn't note to you that  
3 Dr. Weakland even noted out that he was having residual  
4 processes a bit slower. Again, a recognition by Dr. Weakland  
5 that there were issues that Mr. Hopkins was still experiencing  
6 prior to the 2016 accident.

7 While it appears that he made a significant recovery from  
8 the 2011 accident, he was not back to normal. He had residual  
9 problems, as noted by Dr. Weakland, and as we saw, during the  
10 course of this trial, noted by Dr. Stobbe, who noted that his  
11 balance issues had plateaued and would impact him for the rest  
12 of his life.

13 We've heard about that objectively from the plaintiff  
14 himself that he was not able to return to work at any point in  
15 time following the 2011 accident. If he was back to normal, if  
16 he had no residual issues, why does it show up in the medical  
17 records? Why didn't he go back to work? Why was it that he  
18 continued to go on sailing trips, or boating trips, as he  
19 describes it. It just doesn't add up.

20 More importantly, as it relates to this case, it raises  
21 issues about whether and how serious Mr. Hopkins' vertigo was,  
22 as well as what role his lifestyle choices were playing and  
23 contributing towards it.

24 So that brings us to Ms. Gordon's April 17th, 2018,  
25 evaluation. And you saw this slide in my opening, and you saw

1 it during the course of this trial as well. The jury  
2 instructions, as I mentioned, tell you that you have to judge  
3 Ms. Gordon's evaluation based on what she knew at this time.

4 She was trying to give equal consideration to both sides,  
5 to come up with a reasonable, fair estimate based on these  
6 conflicting reports from both plaintiff's counsel and from the  
7 medical records.

8 And here is her evaluation. She came up with a total  
9 evaluation. She came up with a total evaluation of \$39- to  
10 \$106,000 for generals, and \$81- to \$93,040. So for an overall  
11 case value of \$47- to \$115-. That does not include the offsets.  
12 That's a pure-value estimate.

13 This was not a low-ball estimate. This was based on the  
14 evidence. It was based on the facts. It was based on the  
15 information that had been provided to her by the plaintiff's  
16 counsel. This was her best effort to estimate the value of the  
17 claim at this time, based on the information that she had.

18 So when you account for the offsets, which no one has  
19 really disputed in this case, you get the settlement range that  
20 Ms. Gordon made in this case, \$16,000 to \$84,000, and her  
21 initial offer was \$17,340, so, actually, a little bit more than  
22 the low end of her range.

23 But she was not willing to pay \$250,000. Her goal was to  
24 start a negotiation that would result in a settlement that was  
25 within this range. And you heard Mr. Strzelec and Mr. Hight

1 both talk about how calculating these damages, in terms of  
2 range, is a common practice. This is meeting the standards of  
3 custom and industry for these types of claims. She was trying  
4 to negotiate. She was trying to get the claims settled at a  
5 reasonable price.

6 So now let's look at the three estimates side by side.  
7 We've got Ms. May's February 6th, 2018, estimate, the very good  
8 plan, according to Mr. Strzelec. We've got the March 2nd  
9 estimate by Ms. Gordon, which is her reevaluation after she's  
10 assigned the claim. And then we've got the April 17th, 2018,  
11 estimate, so her last estimate after she gets the medical  
12 records.

13 And what we can see is a consistency in terms of the  
14 numbers, in terms of the ranges, and in terms of evaluations.

15 We know the first two estimates didn't have the medical  
16 records, but it had some information, and it had information  
17 specifically from the plaintiff's counsel, and that same  
18 information was available on April 17th, 2018, when Ms. Gordon  
19 prepared her estimate for this case.

20 Mr. Wampold told you during his summation that Ms. Gordon  
21 never did this, that she never prepared these kind of estimates.  
22 That's just not true. The evidence shows that she did. She  
23 calculated specials, she calculated generals. We heard from  
24 Mr. Hight, this was common practice in the industry for her not  
25 to break it out by these individual numbers, as Mr. Wampold did

1 during his summation. This is how they do it in the industry.

2 So in terms of timeliness, going back to our timeline,  
3 we're at April of -- April 20th, 2018, and we see that Integon  
4 received the UIM demand on April 3rd. And so they've responded  
5 now, by April 20th, a call to Ms. Rosato saying, "Hey, let's  
6 talk about this claim," but she wasn't in, so she left a message  
7 for her.

8 And then we see on the 24th of April 2018 that she got a  
9 voicemail, from Ms. Rosato, to talk more about the evaluation of  
10 the claim, and this is where she makes the settlement offer of  
11 the \$17,340. And she provided a basis for this offer, the  
12 September 21st, 2017, record from Cascade. And she indicates  
13 that because of it, they weren't considering these injuries to  
14 be permanent.

15 And Ms. Rosato indicated, "Well, this seems at odds with  
16 what Mr. Hopkins has been telling me, but I'll take it do him  
17 and I'll discuss it with him, and I'll get back to you about  
18 it."

19 And Ms. Gordon followed it up with an email, where she  
20 specifically noted, "Hey, thanks for our conversation. Here's  
21 my offer of \$17,300, and here's the basis for it." She was  
22 showing her cards. She was laying it out there and explaining  
23 why she came up with the evaluation that she did. She wasn't  
24 trying to hide anything from the plaintiff in this case.

25 So then Ms. Rosato goes and talks to Mr. Hopkins and

1 provides this response with regard to the September 1st, 2017,  
2 record.

3 "They got it wrong. They must have confused the timing;  
4 must have been a mistake in my medical records." Again, the  
5 theme that we heard, throughout the course of this trial, is  
6 that they think this record is wrong, but yet they've produced  
7 nothing -- no witness, no evidence -- to show that Ms. Emami's  
8 recollection of the events on that day was incorrect.

9 It also applies to medical records, not just this  
10 September 1st, 2017, record, but also Dr. Taylor's April 20th,  
11 2017, record, where all of Mr. Hopkins' symptoms had resolved,  
12 except for some of the vertigo, and Ms. Grove's and Dr. Eaton's  
13 record from around the same time, June of 2017, where they both  
14 reported that his headaches were gone. We heard the same  
15 themes: These must be mistakes, they didn't ask the right  
16 questions. This is further evidence of the uncertainty  
17 regarding the permanency and causation of Mr. Hopkins' symptoms.

18 So we go to May, early May 2018. You can see from this  
19 note that Integon's plan, despite these inconsistencies in the  
20 medical record, was to continue negotiating the settlement of  
21 the UIM within the authority provided.

22 You heard Ms. Gordon testify that she had the authority of  
23 up to \$75,000, and this was in addition to the \$10,000 PIP and  
24 the \$25,000 from Progressive. So she sends an email to her  
25 supervisor, Mr. Chodacki, saying, "I got this response from the



1 plaintiff's counsel. They think this September 1st record is in  
2 error. I suggest we continue to negotiate within this amount."

3 So Mr. Chodacki responds, and he enters a note saying,  
4 "Yeah, I'm in agreement with you. I think that you should  
5 continue to investigate and continue to negotiate, but I also  
6 think you should do a records review to address the causation  
7 and the apportionment issues." And as we saw throughout this  
8 course of this trial, that's exactly what happened.

9 So right after this exchange with Mr. Chodacki, Ms. Gordon  
10 calls Ms. Rosato and says, "Hey, we're still analyzing causation  
11 and wanting to have the records reviewed. We can make another  
12 offer, if you want to continuing negotiating with us," at that  
13 time, and Ms. Rosato responds, "Why don't you just wait until  
14 after you've had this records review done before we continue to  
15 negotiate?"

16 What's notable is, there is no evidence and there's no  
17 notation in these notes that there was any complaints, any  
18 objections, no letters from Ms. Rosato or anyone else on behalf  
19 of the plaintiff in the following weeks saying, "Hey, you're  
20 taking this investigation in the wrong direction. We don't  
21 think this records review is a good idea." Nothing. At no  
22 point, during this period of time, did we hear from the  
23 plaintiff's counsel that they thought this was a bad idea.

24 THE COURT: Mr. Harris, we need to find a place to let  
25 the jurors stand up and take a stretch.

1 MR. HARRIS: I think we can do that now.

2 THE COURT: Thank you. Ladies and gentlemen, let's  
3 stand up and take a stretch, please.

4 (Off the record 11:54 to 11:55 a.m.)

5 THE COURT: All right. Mr. Harris, you may continue.

6 MR. HARRIS: Thank you, Your Honor.

7 So what we see at this point in time -- and Mr. Wampold  
8 mentioned this to you during his summation -- we see Ms. Gordon  
9 reaching out to Mr. Wilson, a local attorney, to get  
10 recommendations for a doctor to do a records review. We've seen  
11 extensive efforts, multiple emails, phone calls with Mr. Wilson,  
12 to find a qualified doctor with the appropriate qualifications  
13 and certifications -- a neurologist, in this case -- to complete  
14 the records review.

15 So we see the amount of activity that's going on during  
16 this period of time from when we get the demand letter, which  
17 was dated in late March but not received until early April. We  
18 had this series of phone calls, emails, going back and forth,  
19 trying to coordinate this records review so that everybody is on  
20 the same page in terms of they know what's going to happen.  
21 Ms. Rosato knows, Ms. Gordon knows, Mr. Wilson knows. They're  
22 all trying to work together to try to get the investigation to  
23 move forward so they can resolve the UIM claim.

24 And this shows the plan, the investigation that was  
25 performed, in terms of first reviewing the material that was

1 provided, preparing the initial evaluation regarding the claim  
2 value, communicating with the plaintiff about the claim value  
3 and explaining the basis for that evaluation, collaborating with  
4 the plaintiff to get a plan in place for how they were going to  
5 break through this logjam -- because one side was at one number,  
6 the other side was at a different number -- and they had issues  
7 about causation, how were they going to break through to try to  
8 come to a common ground to settle this claim, and then, fifth,  
9 executing this plan by having Mr. Wilson provide recommendations  
10 for neurologists that are local that can perform this work and,  
11 if needed, perform an IME down the road or do other  
12 investigation if it's warranted in the future.

13 Again, Ms. Gordon is not sitting by idly, as Mr. Strzelec  
14 testified. She was working the case. She was trying to get it  
15 to a position where it could be settled.

16 By mid June, Ms. Gordon was having some difficulties  
17 finding the appropriate expert, and she continued to follow up  
18 with Mr. Wilson. There are other notations in the claim file --  
19 that you can review during your deliberations -- showing the  
20 multiple and regular efforts by Ms. Gordon to get Mr. Wilson --  
21 to work together with him to find an expert to do the records  
22 review.

23 So this is a notation that Mr. Wampold didn't show you  
24 during his opening. He showed you one that comes a lot later.  
25 But in terms of emails going back and forth and this phone call

1 that occurs on June 28th, 2018.

2 And we talked about this with Mr. Hight. We ended up  
3 talking about this at the very end of the day -- I don't  
4 remember -- the very end of the day on Friday last week. This  
5 notation indicates there was a phone call on this date, on June  
6 28th, where Ms. Gordon talks to Ms. Rosato, provides the status  
7 to Ms. Rosato, and they have a conversation about a neurologist  
8 or a neuropsychologist. And it's Ms. Rosato who says, "Well, I  
9 think you want a neurologist, since it is a vestibular issue  
10 versus a TBI." And so Ms. Rosato not only agrees with the  
11 course of the investigation, but she's, actually, participating  
12 in the investigation. She's helping direct the investigation in  
13 terms of who is the appropriate doctor to have a records review  
14 done to further the investigation.

15 So based on this, Ms. Gordon calls Mr. Wilson right after  
16 this and says, "Hey, let's look at neurologists instead of  
17 neuropsychs. Let's change what we're looking for in terms of a  
18 records review. I want to have the right expert with the right  
19 credentials in place to do this records review."

20 So we're at a few weeks later, and we're still waiting on  
21 neurologists recommendations, and they're still trying to find  
22 out who is the right expert, who is available, who has the time  
23 to do this. And so she receives a long list of names:  
24 Dr. Reif, Dr. Rockwell, Dr. Braun, and Dr. Kutsy. And she  
25 starts calling around. She calls Dr. Reif, and Dr. Reif says,

1 "Well, we're not booking for another four months right now, in  
2 terms of this, so it's going to be a little while." And  
3 Ms. Gordon knows it's kind of been a little while and she needs  
4 to get this going, she needs to move this forward, and so she  
5 reaches out to Dr. Kutsy and says, "Hey, are you available? Can  
6 you help me out with this claim?"

7 The same day she gets an email from Ms. Rosato -- and  
8 Mr. Wampold told you this during his summation -- asking for a  
9 status and saying, "Hey, have you selected a neuro, and what's  
10 going on?"

11 And so Ms. Gordon said, "I advised Ms. Rosato I hope to  
12 select a neuro and send out file materials by the end of this  
13 week." And we know this because we had this email to Ms. Rosato  
14 from Ms. Gordon in late July 2018, saying, "Good afternoon, Ann.  
15 I've been in contact with some neurologists. I'm hopeful to  
16 make the decision soon. I appreciate your patience,"  
17 acknowledging this is taking some time, but they want to go in  
18 the right direction. They want to get the proper doctor to do  
19 the records review. They don't want to rush it. They want it  
20 done right.

21 Again, no objection to this records review by Ms. Rosato at  
22 this time; no indication that an IME should be performed; no  
23 request by Ms. Rosato to interview Mr. Hopkins or any of his  
24 doctors or his family; an acknowledgment, an agreement, that  
25 this is the plan going forward and that, Once this is done,

1 we're going to continue negotiating settlement after it's all  
2 done.

3 So we see this pattern, these multiple communications  
4 during this period of time, keeping Ms. Rosato informed of  
5 what's going on, keeping them updated with regard to the status  
6 of the investigation.

7 And then going back to August 1st, Ms. Gordon finally gets  
8 ahold of Dr. Kutsy, the next day. Based on the response of his,  
9 it looks like Dr. Kutsy has time and is available to do this.  
10 He has the qualifications. He's board certified in the  
11 appropriate specialty, neurology, so she decides to hire him,  
12 and one week later, Ms. Gordon sends the materials to Dr. Kutsy.

13 As you heard during trial, Ms. Gordon didn't just send the  
14 medical records that she received from the plaintiff's counsel.  
15 She provided the demand letter as well so that Dr. Kutsy could  
16 see these are the allegations that the plaintiff is making, here  
17 is what they're seeking in this case.

18 She also provided photos of the accident and the repair  
19 estimate so that Dr. Kutsy could understand the forces that were  
20 involved in the accident. As you heard Dr. Kutsy talk about,  
21 that was an important part of his evaluation regarding the  
22 medical -- based on the medical literature for recurrent  
23 concussions in low-force car accidents or low-force head blows  
24 following a prior concussion.

25 And Ms. Gordon didn't just stop there. She also

1 provided -- and I think this is very significant -- a copy of  
2 the email that she got from Ms. Rosato that indicated that  
3 September 1st, 2017, record was in error. She wasn't trying to  
4 skew Dr. Kutsy's opinions by withholding this record from him.  
5 She wanted a real second opinion based on the same information  
6 that she had, that she was looking at, with regard to the value  
7 of the plaintiff's UIM claim.

8 This is the very definition of good faith and equal  
9 consideration for the insured's interests.

10 It shows that she was trying to get to a fair and unbiased  
11 opinion from Dr. Kutsy, given the discrepancy in the medical  
12 records and the further discrepancies based on the statements  
13 that were given to her by plaintiff's counsel with regard to the  
14 September 1st, 2017, record being erroneous.

15 So a few days later, Ms. Gordon received confirmation that  
16 Dr. Kutsy had received the documents, and she sent a reminder, a  
17 diary, to follow up with Dr. Kutsy's office about the report.

18 And then a few weeks later, she gets the report. She takes  
19 a look at it, she reviews it, and then she summarizes it in her  
20 notes, and she noted Dr. Kutsy's opinions: One, Mr. Hopkins did  
21 not sustain a concussion as a result of the 2016 accident.

22 And you heard Dr. Kutsy explain that yesterday during his  
23 testimony. He testified that he disagreed with any diagnosis of  
24 a concussion, including Dr. Weakland's diagnosis, given a lack  
25 of objective findings, objective evidence to support a finding

1 of a concussion. No loss of consciousness, no amnesia, no  
2 alteration of speech or behavior.

3 Dr. Weakland's record -- and you can see this during your  
4 deliberations -- of April 25th, 2016, also notes that  
5 Mr. Hopkins exhibited no signs of certain clear symptoms that  
6 are diagnostic for a concussion. No confusion in terms of  
7 knowing the date, the place, or the President. He knew the  
8 doctor's name, he had no alteration of recall abilities, and had  
9 no reports of any sleeping problems.

10 Dr. Kutsy, like all the other medical records provided,  
11 reviewed it, considered it -- it's in his report that it was a  
12 record that was provided that he reviewed and analyzed in  
13 forming his opinions.

14 We also heard from Ms. Montes. Ms. Montes was at the  
15 accident scene, right after it happened, and she testified that  
16 the plaintiff exhibited no signs of being dazed and confused,  
17 that he did not have any nausea or any vomiting that she  
18 witnessed at the time.

19 And she also testified about the forces that were involved  
20 in the accident. She testified about how she was stopped, and  
21 then she went forward and then impacted Mr. Hopkins' vehicle.  
22 And as the photo that you saw, from Mr. Wampold during his  
23 opening, shows her hood was bent up a little bit, and that's  
24 because it got caught underneath the spare-tire cover of the  
25 back of Mr. Hopkins' vehicle. But what you don't see on



1 Mr. Hopkins' vehicle is any markings, really on the bumper.

2 Ms. Montes' car never actually got to the bumper. At least you  
3 can't visibly see anything, which indicates the only part that  
4 they impacted was the hood hitting the back of the tire cover.  
5 That is low impact, low forces, and that was part of the basis  
6 for Dr. Kutsy's opinions that this kind of accident, based on  
7 the forces, could not have caused a concussion.

8 We also have Mr. Hopkins' own police report that was filed,  
9 not just the day after but two weeks later, where he indicates  
10 that his injuries from the car accident were minor.

11 Dr. Kutsy's second opinion had to do with vertigo, and he  
12 explained how plaintiff may have suffered some BPPV, benign  
13 paroxysmal positional vertigo, gravitational vertigo, but it  
14 should have resolved within three months, which is the common  
15 standard for the resolution of this type of vertigo.

16 He also discussed how the medical reports indicate some  
17 reports of vertigo in 2016, and occasionally in 2017, but the  
18 reports changed, and they, really, start talking more about  
19 dizziness, disequilibrium, and balance issues. Given the low  
20 impact of this car accident, along with natural aging, Dr. Kutsy  
21 could not attribute these balance issues or the disequilibrium  
22 to the 2016 car accident.

23 He noted there was no clinical evidence of a concussion or  
24 any objective testing, including the battery of tests that were  
25 available to diagnose a problem with the inner ear that were

1 performed. So given that, there was nothing objective in terms  
2 in terms of diagnosing the cause of this disequilibrium.

3 You heard from Dr. Kutsy that that lack of objective  
4 testing was an important factor, an important consideration  
5 based on the medical and scientific standpoint that there was  
6 insufficient evidence to attribute these symptoms to the 2016  
7 accident.

8 He also noted the gaps in treatment, boating trips, the  
9 trip to Panama, which all suggested, in conjunction with the  
10 medical records, that his symptoms were resolving, and that,  
11 except for this vertigo and some of this dizziness he was  
12 experiencing, he was improving and getting better.

13 So based on Dr. Kutsy's report, Ms. Gordon made the  
14 determination to increase to the offer to \$40,000, and for  
15 Mr. Wampold to say, "Well, this was based on a number of days  
16 and this is how she was calculating it," well, that's not  
17 exactly how it works.

18 What she was doing is she was saying, "Okay, we had this  
19 issue of the vertigo, and we had this range of potential  
20 damages, if there is a vertigo that exists." And so she said,  
21 "Okay, given the fact that we've got some vertigo here, how am I  
22 going to the calculate this? How am I going to come up with  
23 more money for Mr. Hopkins to try to settle this case, to try to  
24 move the negotiations further," as she indicated before she  
25 wanted to do.

1           You from heard her -- we talked about it earlier in terms  
2   of her claim notes -- that the basis for her increasing her  
3   offer was Dr. Kutsy's report that at least some of the vertigo  
4   was attributable to the accident, but there were questions about  
5   causation and about permanency with regard to the vertigo,  
6   overall, after that period of time.

7           You also heard Ms. Gordon testify that at no point prior to  
8   this lawsuit was she provided with a copy of this report. I  
9   mentioned this to you earlier. This could have been another  
10   piece of evidence that she could have considered and Dr. Kutsy  
11   could have considered with regard to permanency. But without  
12   this report, there was nothing. There were no declarations, no  
13   statements, no evidence whatsoever from Dr. Taylor that she  
14   considered these injuries to be permanent.

15           I mentioned to you earlier, you have to judge Ms. Gordon  
16   and her actions based on what she had and when she had it, not  
17   on what subsequently occurred, what was prepared later, and what  
18   was provided later.

19           When combined with Dr. Kutsy's report and his opinions,  
20   Ms. Gordon had nothing more than plaintiff's counsel's  
21   unsubstantiated assertion that the vertigo was permanent. He  
22   had no medical record establishing that fact.

23           You heard from Mr. Strzelec that she's not permitted to  
24   speculate or guess or take blind assertions as being true. She  
25   has to investigate the facts and the documents to see where that

1 investigation leads and what it shows.

2 Based on what she had at that time, she was reasonable to  
3 believe that the plaintiff did not have a permanent injury as a  
4 result of the 2016 car accident.

5 So given that, we have to look at the reasonableness of the  
6 settlement offer. When you consider the offsets for the PIP and  
7 the \$25,000 from Progressive, her offer, the increase to  
8 \$40,000, constituted a \$75,000 assessment of the overall value  
9 of Mr. Hopkins' claim.

10 You also heard Ms. Gordon testify that she was willing to  
11 offer more money to resolve the UIM claim. You saw this from  
12 the claim notes and the approval from her manager, Mr. Chodacki,  
13 that she could settle this claim within her authority. And had  
14 she gone up to the top end of her range, at \$84,000, she would  
15 have paid a total of \$119,000 to settle this UIM claim.

16 But plaintiff was unwilling to negotiate. Ms. Gordon was  
17 willing to negotiate. She tried. She made two different offers  
18 to try to get this claim resolved at a reasonable value. You  
19 heard from both Mr. Hight and Mr. Strzelec. This process of  
20 negotiation is common and standard in the handling of UIM  
21 claims.

22 But let's talk about the specifics and the claims that  
23 you're going to be asked to decide as you begin your  
24 deliberations in the jury room, or the Zoom jury room as we're  
25 going to refer to it, and though it relates to the

1 extra-contractual claim, the other claims, I want to start by  
2 talking about a couple of things regarding coverage.

3 The first one is that Integon, at no point in time, ever  
4 denied coverage. It always admitted that it owed UIM coverage  
5 to Mr. Hopkins. They never disputed it.

6 They made two offers to settle the UIM claim and it paid  
7 all the medical bills, and all the damage to Mr. Hopkins' car  
8 was paid for my Progressive.

9 Question 1 of the verdict form you're going to get asks you  
10 to enter an amount for the damages that were sustained as a  
11 result of the 2016 car accident. We ask that you award the  
12 \$10,000 in PIP, the \$25,000 from Progressive, the \$1,069 for the  
13 car, along with the \$84,000 that was offered within the range  
14 that was established by Ms. Gordon, for a total of \$120,069.

15 As to the other claims, the first one, negligence, we  
16 talked about this a little bit at the beginning, but it asks you  
17 whether Integon breached a duty of care. As I mentioned before,  
18 this is based on a standard of reasonableness. Would a  
19 reasonably prudent person act in the same manner, under the same  
20 circumstances, based on the same information as Ms. Gordon and  
21 others at Integon had at that time?

22 After consideration of the evidence and the testimony in  
23 this case, my client asks that you come back and return a  
24 verdict and answer this question no, that Integon was not  
25 negligent in this case.

1           The next claim is bad faith, and it has a very similar  
2           standard. Did they act unreasonably, frivolous, or unfounded?  
3           I explained these concepts to you a little bit during my  
4           opening, and we heard from Mr. Strzelec and Mr. Hight about the  
5           reasonableness of my client's conduct in this case, how it's  
6           common in the industry to negotiate and to handle claims, and to  
7           work cooperatively with the other side. The question you're  
8           going to be asked is whether that was unreasonable, frivolous,  
9           or unfounded.

10           And I showed this to you in opening, but here's my take on  
11           the definitions of these terms: Unreasonable, meaning without  
12           reason; frivolous, meaning baseless; unfounded, meaning  
13           unsubstantiated.

14           Again, perfection is not required. No one is perfect.  
15           That's why pencils have erasers.

16           These are people. These are people handling claims. These  
17           are people trying to do the best they can to evaluate this claim  
18           with imperfect information, and not all the information at  
19           times.

20           You can't take Ms. Gordon and Integon, put them under a  
21           microscope, and say they could have done this and they could  
22           have done that. That's not the standard. They're not required  
23           to be perfect. They had a reason and a basis for doing what  
24           they did, and they were trying their best to resolve this claim.

25           The court has provided you this instruction with regard to

1 the duty of good faith. It instructs you that what they had to  
2 do is deal fairly with Mr. Hopkins. They had to give him equal  
3 consideration.

4 You heard from Mr. Strzelec that equal consideration meant  
5 51 percent to 49 percent. They didn't have to give him every  
6 benefit of the doubt. All things being equal, they had to go  
7 with the policyholder, but they could also consider their own  
8 interests. It's a very narrow balance in terms of the interests  
9 in this case.

10 Did they take Mr. Hopkins' interests into consideration?  
11 We can see from the claim files, the information that Ms. Gordon  
12 evaluated, reviewed, provided to Dr. Kutsy, they did. They gave  
13 equal consideration to his interests, and they were trying to  
14 reach a reasonable and appropriate settlement value in this  
15 case.

16 Based on the evidence and the documents and the witnesses  
17 you've heard in this case, we ask that you return a verdict of  
18 no, and find that Integon did not act in bad faith in this case.

19 As to IFCA, it's another question on the verdict form  
20 you're going to be asked to answer, and it asks you, "Did  
21 Integon unreasonably deny payment of benefits?" A little more  
22 specific, but really it's kind of the same question that we  
23 talked about with regard to bad faith, with regard to  
24 negligence.

25 Based on the testimony and for the same reasons I've

1 mentioned to you before, my client asks that you return a  
2 verdict of no on this claim as well and find they did not  
3 violate IFCA by not unreasonably denying payment of benefits to  
4 Mr. Hopkins.

5 And then, lastly, to the CPA. This one asks a series of  
6 questions, and Mr. Wampold went through those, but, first, one  
7 question you're going to be asked is to look at the  
8 communication with Ms. Rosato in this case. And I previously  
9 went through the communication already. I showed you how  
10 Integon responded to various communications, sometimes that same  
11 day, but, typically, within a couple of days after they received  
12 it, and once the UIM demand came in, how Integon reviewed it.  
13 They submitted a timely and appropriate response, and at no  
14 point was plaintiff's counsel unaware that Integon intended to  
15 complete a records review and provide a settlement offer. There  
16 is now evidence in this trial that's been presented to the  
17 contrary.

18 My client asks that you find in its favor as to this part  
19 of the CPA claim.

20 Second, you're going to be ask to decide if Integon  
21 promptly provided a reasonable explanation of the policy.

22 There is no evidence that the plaintiff's counsel in this  
23 case did not know that UIM coverage existed or what benefits  
24 were available, and the only issue is the explanation of the  
25 settlement offer.



1           You saw from the email I provided to you that Ms. Gordon  
2       not only provided the amount of the settlement offer, but she  
3       provided the basis. She explained what she was doing; that she  
4       was relying on this record from September 1st, 2017, that was  
5       inconsistent with other information she had received. But she  
6       was told and provided an explanation for the coverage that was  
7       being provided under the policy.

8           Based on that, my client asks that you find in its favor  
9       and answer this question "no" as well.

10          The next two questions as to the CPA asks whether Integon  
11       failed to adopt or implement reasonable standards for prompt  
12       investigation, and whether they performed and conducted a  
13       reasonable investigation, really focusing on the investigation  
14       that was performed.

15          As to the first question, there is no evidence that's been  
16       presented regarding the standards that Integon had for a prompt  
17       investigation; thus, there's nothing really for you to decide on  
18       whether those standards are reasonable or not.

19          As to the investigation, as I've mentioned to you and we've  
20       talked about during the course of this trial, the investigation  
21       was reasonably prompt and plaintiff's counsel was kept informed  
22       the whole time.

23          The concept of the records review versus the IME was  
24       discussed at length during the course of this trial. Mr. Hight  
25       testified that the decision to do a records review instead of an

1 IME was reasonable.

2 Integon's decision to do this did not foreclose the  
3 possibility that it could conduct an IME at a future date or  
4 take other steps to further its investigation had this lawsuit  
5 not been filed when it was.

6 The idea of interviewing plaintiff and his medical  
7 providers, as Mr. Hight testified, is not a common practice in  
8 the insurance industry. That's not part of a reasonable  
9 investigation. Could it have been done? Yes, but it's not a  
10 matter of minimum claim-handling standards and practices. It's  
11 not done in every case. In fact, Mr. Hight said it's rarely  
12 done in these types of cases.

13 It was not unreasonable to do it at the outset of this  
14 investigation, and it was certainly not unreasonable to not do  
15 so until after the records review was completed, given the  
16 agreement and the collaboration with plaintiff's counsel that  
17 this was the appropriate first step for the investigation.

18 Lastly, you heard from Mr. Strzelec, who said he had no  
19 problem with the investigation in terms of the decision to have  
20 a record review done. And they all agreed that a neurologist  
21 was the appropriate doctor to conduct the records review.

22 Lastly, as I mentioned, there is no indication, no evidence  
23 whatsoever of any objection, any letters, or emails saying,  
24 "Maybe you should be doing this, maybe you should be doing an  
25 IME, maybe you should be calling plaintiff's doctors." None of

1 that exists in this case.

2 At no point was it even suggested to Integon that they  
3 should be doing anything else other than what they were doing.

4 Therefore, as to these two questions regarding the  
5 investigation, my client asks you to find in its favor and  
6 answer "no" to both of these questions.

7 The last two questions regarding the CPA asks about the  
8 settlement efforts and whether plaintiff was offered  
9 substantially less than the value of their claim.

10 As I mentioned before, Integon, on two separate occasions,  
11 tried to settle this claim. Even after the initial offer was  
12 rejected, Integon asked plaintiff's counsel, "Hey, do you want  
13 us to make another offer?" They said, "No, let's do the records  
14 review first, and then we'll talk more in the future." That was  
15 the plan that was agreed upon. Based on the information that  
16 was provided, what Integon knew at the time, their efforts to  
17 try to settle the claim were equitable and fair at that time.

18 Therefore, based on these questions, my client asks that  
19 you answer "no" as well, that Integon did not violate the  
20 Consumer Protection Act in this manner.

21 So in conclusion, my client does not dispute, nor have they  
22 ever disputed, that plaintiff is entitled to UIM benefits. I've  
23 suggested a number you should award for those benefits, but that  
24 really is up to you to make that determination as to what amount  
25 of damages Mr. Hopkins suffered as a result of the 2016

1 accident.

2 Integon's conduct, however, was reasonable at all times.  
3 It didn't breach any duties to the plaintiff, it didn't act in  
4 bad faith, it didn't violate any of the statutes at issue. At  
5 all times, Integon, and its people, were striving to do their  
6 best to accurately and appropriately evaluate this claim.

7 You should find for my client on all the other claims at  
8 issue in this case.

9 I want to thank you for your attention, your dedication,  
10 and your time. You are what makes our system of justice work,  
11 and I appreciate your contribution towards it in this case.

12 THE COURT: Thank you, Mr. Harris.

13 Ladies and gentlemen, I'd like to talk with you as the jury  
14 for a second. Would you please unmute yourselves?

15 It's now 12:23, and we ran into our lunch hour, and I want  
16 to make sure that you can concentrate on what is yet to come,  
17 which is about another 30 minutes of a rebuttal.

18 If I cut your luncheon a bit short, to 1:10, does that  
19 still give you enough time to eat and come back to us?

20 JUROR: Yes.

21 THE COURT: Yes? No?

22 JUROR: Yes.

23 THE COURT: All right. Then that's what I'm going to  
24 ask that you do. I don't expect you to gulp down your lunch,  
25 but if you would eat quickly, get a little stretching in, and

1 come back, and we will finish up, and begin at 1:10. You may be  
2 excused.

3 THE FOLLOWING PROCEEDINGS WERE HELD  
4 OUTSIDE THE PRESENCE OF THE JURY:

5 THE CLERK: All the jurors are in the jury room.

6 THE COURT: Okay.

7 I'm sorry, Mr. Wampold, I just can't push them that hard to  
8 pay attention for another 30 minutes.

9 MR. WAMPOLD: I agree with that decision, Your Honor.

10 THE COURT: Okay. Then let's come back at 1:10.

11 Is there anything else we need to take care of before then?

12 MR. WAMPOLD: Not from us, Your Honor.

13 MR. HARRIS: No, Your Honor.

14 THE COURT: Okay. Have you gone over the exhibits  
15 with Mr. Cogswell so you're ready to certify to me that  
16 everything that is in the Box should be there, and there isn't  
17 anything there that they will have access to that's not supposed  
18 to be there?

19 MR. WAMPOLD: That's my understanding. My  
20 understanding is that happened late last night and early this  
21 morning.

22 THE COURT: Okay. Then we'll see you at 10 minutes  
23 after 1:00, please.

24 MR. WAMPOLD: Sounds great. Thank you, Your Honor.

25 (Court in recess 12:25 p.m. to 1:11 p.m.)

1 THE COURT: Good afternoon, counsel. Mr. Gahan, are  
2 you doing the mop-up here?

3 MR. GAHAN: Yes.

4 THE COURT: All right. No more than 30 minutes?

5 MR. GAHAN: Yes.

6 THE COURT: Do we have our jurors back, Mr. Cogswell?

7 THE CLERK: Your Honor, this is Lowell. Grant just  
8 sent me a Skype. He is stuck in the breakout room.

9 THE COURT: Okay. Ms. Williams, can you check and see  
10 how our jurors doing?

11 THE CLERK: I will.

12 THE CLERK: Okay. I'm back, Your Honor. Sorry.

13 THE COURT: Mr. Cogswell, you were imprisoned in a  
14 breakout room?

15 THE CLERK: Yes, and then I couldn't get back on Zoom.  
16 Some of the jurors texted me and said they're experiencing the  
17 same issues. Let me check.

18 All right. Your Honor, all jurors are in the breakout  
19 room.

20 THE COURT: Let's bring them back, please.

21 THE FOLLOWING PROCEEDINGS WERE HELD  
22 IN THE PRESENCE OF THE JURY:

23 THE COURT: All right, ladies and gentlemen. Good  
24 afternoon. This is the homestretch. I'm asking you to give  
25 your kind attention to Mr. Gahan. He has the privilege of

1 giving rebuttal argument on behalf of Mr. Hopkins.

2 Mr. Gahan?

3 MR. GAHAN: Thank you, Your Honor.

4 PLAINTIFF'S REBUTTAL ARGUMENT

5 MR. GAHAN: Throughout this trial, Mr. Harris has used  
6 the phrase, "strive to do their best," to excuse or explain what  
7 Integon did here. And there is a sense in which I agree with  
8 him. Integon strove to do their best. The problem is, they  
9 strove to do their best for Integon.

10 I want you to think about every decision tree that Integon  
11 has faced in this case, every opportunity since they received  
12 that demand letter to make a decision about what they were going  
13 to do next, and I want you to ask yourselves whose interest was  
14 Integon looking out for, because Integon is not allowed to  
15 strive to do their best for Integon.

16 Remember, this is back in March, April, May, June, July,  
17 August, September, October 2018. There's no trial. They're  
18 supposed to be on the same side.

19 Mr. Hopkins went out and bought insurance and was the  
20 policyholder for this insurance with the understanding that his  
21 premiums were going to go to -- if he was ever injured and a  
22 driver that hit him didn't have enough insurance -- that his  
23 premiums was going to go to the evaluation of his claim so he  
24 could work together with his insurance company to find out what  
25 his damages were, and he could get paid.

1           That's what he thought he was paying for, and that's what  
2           was supposed to be happening during this window. It wasn't  
3           supposed to be adversarial. You're not supposed to be saying  
4           things in the claim notes that say stuff like, "Things that are  
5           good for Mr. Hopkins are weaknesses for us, and things that are  
6           bad for Mr. Hopkins are strengths for us." "There is a downside  
7           to getting an in-person medical evaluation because then we'll  
8           have to disclose it." That is not being on the same team. That  
9           is not equal consideration. That is not working for your  
10          customer, Mr. Hopkins.

11          And that's the context that we're in. Don't let the fact  
12          that this trial has an adversarial nature to it, don't let the  
13          fact that, at this trial, it's Mr. Hopkins versus Integon make  
14          you think that that's how it was supposed to be back in 2018,  
15          because it wasn't.

16          And even though Integon's records draw these clear lines in  
17          the sand and are thinking about trial when they were supposed to  
18          be thinking about how to evaluate the claim, that doesn't mean  
19          that they were following Washington State insurance guidelines,  
20          and it certainly doesn't mean that they were within Washington  
21          law.

22          If Integon strove to help Integon, to the detriment of  
23          their policyholder, then they violated the CPA, they violated  
24          IFCA, they violated their good-faith obligations, and they  
25          committed negligence.



1 But I know that that's not what Integon is really saying,  
2 right? They're not really saying "we strove to do the best for  
3 ourselves." What they're saying is, "Ladies and gentlemen of  
4 the jury, Integon tried really hard, and that's good enough."

5 And then when Mr. Harris made that argument -- he made it  
6 in opening, and then he came back and he made it in closing, and  
7 he paired it up by saying that we're trying to change the  
8 standard, that we're trying to hold Integon to this impossible  
9 standard of perfection. And all I could think of is, well, wait  
10 a second. The standard that we talked about was fair and  
11 reasonable. The standard that we talked about was equal  
12 consideration. We certainly talked about those, and that's an  
13 important one, right, equal consideration? Because, if you  
14 remember, Mr. Hight didn't believe that equal consideration  
15 applied, and when he evaluated this case, didn't apply equal  
16 consideration at all, and, in fact, was critical of Mr. Strzelec  
17 for saying that equal consideration applied. And all of you  
18 know that that's exactly the standard that applies here.

19 But Integon says that we're using the wrong standard and  
20 that the real standard, that they've cut out of whole cloth, is  
21 strive to do your best. Well, what's the problem with that  
22 standard? Well, first of all, it's completely subjective,  
23 right? All you need to win on that standard is have someone  
24 say, "Well, maybe I wasn't great, but I tried really hard." All  
25 you need is to get some expert to come in and say, "Yeah, I

1 looked at this, and, yeah, it looked like they tried hard."

2 The imbalance of power here is overwhelming. Remember  
3 that. This is an insurance company versus an individual, and  
4 that's why, as Mr. Wampold argued in his closing, the law has to  
5 be so adamant, so clear, and so forceful -- and that's why  
6 there's so many avenues towards compensation for Mr. Hopkins.  
7 It's because of this acknowledgment that you don't just have to  
8 try really hard. You actually have to follow very specific  
9 criteria. You have 30-day windows, you have 10-day windows, you  
10 have a duty of equal consideration. You can't make an offer  
11 that's so low that it forces your policyholder to sue you just  
12 to get fairly compensated. Those aren't vague. Those aren't  
13 some amorphous, in-the-air standards that would allow,  
14 basically, anybody to pass them. Those are real,  
15 etched-in-stone laws and rules that insurance companies have to  
16 abide by.

17 And one of the reasons those are in place is to  
18 specifically prevent insurers from pursuing their own profits  
19 and then hiding behind this, "Well, we tried our best," because  
20 if that was the standard, every insurance company in the country  
21 would try to do their best and maximize their profits to the  
22 extreme detriment of their policyholders, and that's exactly  
23 what Washington law prevents them from doing.

24 Mr. Harris and Dr. Kutsy emphasized that, what they saw as  
25 gaps in treatment -- I think Mr. Harris got up and said a

1 four-month trip to Panama and --

2 Look. You're going to have Exhibit 17. Exhibit 17 shows  
3 you all the visits that Mr. Hopkins went to. I urge you to look  
4 at that. Look at all of his treatment, and tell me if there is  
5 a four-month gap in treatment. You know there's no --  
6 Mr. Harris knows, I should say, that, in this document, Exhibit  
7 17-1, there's a few months here and there where Mr. Hopkins did  
8 not go to treatment.

9 And the irony is that, as critical as Dr. Kutsy was about  
10 Mr. Hopkins' gaps in treatment and that he used it to, sort of,  
11 fuel his opinion, when I asked him questions about the treatment  
12 that Mr. Hopkins underwent, do you remember what  
13 Dr. Kutsy said? He said, "Well, after three months, treatment  
14 was pointless. He didn't need to keep going to treatment  
15 because it was clear that his vestibular injury had plateaued,  
16 he was never going to get any better, and you can't do anything  
17 about it, so why go to treatment?"

18 Well, if that's true, Dr. Kutsy, if there is no point to  
19 have treatment, then why are you critical if Mr. Hopkins does  
20 treatment on his boat with his family or at home for a few  
21 months rather than come in to physical therapy?

22 And the reason that they're making that assertion -- and  
23 this is something that I think we just have to come out and say,  
24 because Mr. Harris has, sort of, soft-peddled this -- it was the  
25 undercurrent in Dr. Kutsy's testimony. It was certainly, sort

1 of, bubbling underneath the surface of Mr. Hight's testimony --  
2 is that Mr. Hopkins must just be a liar.

3 I mean, really. Mr. Hopkins said, "I didn't have this  
4 injury before, and now I have it." Mr. Hopkins went to visit  
5 after visit after visit to treat a new injury, when, in 2013,  
6 '14 and '15, he hadn't gone to any visits to treat it.

7 So when they say things like, "Well, why didn't he go to  
8 the doctor right away," and, you know, don't mention in their  
9 opening that it was actually a Sunday, the day after the  
10 collision, and that he went immediately the next business day.

11 Or when they say things like -- they make a big deal out of  
12 this notion that Mr. Hopkins wasn't entirely consistent in his  
13 medical record, right? Like, he'll go to physical therapy one  
14 day and his headaches are doing well, and then he goes another  
15 day, and they're not so good. He goes one day, and he's able to  
16 deal with some things a little better than others.

17 What Mr. Harris is trying to sell to you is that, "That  
18 tells us he's lying. We caught him." Because Dr. Eaton did  
19 this test and it didn't show as much injury one day as it did  
20 another, so it must be that Mr. Hopkins is making all of this  
21 up.

22 There's really no way around that that's their position,  
23 because Mr. Hopkins is saying and said under oath and said to  
24 all of his doctors and all of his treaters that he had no  
25 vertigo before this collision, that it had been completely

1 resolved by 2013. So their position has to be that he's just  
2 not been honest and, in a sense, he's committing insurance  
3 fraud.

4 So I'd like to say a few things about that, but first is,  
5 let's just believe him for a second, let's say it's true. If  
6 it's true and what Mr. Hopkins is doing is going to these  
7 doctors and trying to craft a record so at the end of the day he  
8 can get \$250,000, and if he's going to them weekly for two  
9 years, why wouldn't he say, "I have headaches all the time"?  
10 Why wouldn't he say, "I'm doing way worse." Why wouldn't he  
11 say, "Oh, my gosh, I'm way worse than I was back in 2011. I'm  
12 just not doing well."

13 Remember, according to Integon, what he's doing is being  
14 dishonest. Well, wouldn't you try to make the best possible  
15 record you could instead of doing what every single one of his  
16 treaters said that he was doing, which was working his butt off  
17 trying to get better and better and better every time and  
18 showing signs of happiness when he got better. He was relieved,  
19 he was pleased, and his family was, too. When he got to say,  
20 "Yeah, my headaches are pretty much resolved because I've been  
21 doing all these activities" -- "I've been avoiding activities  
22 that might flare it up." When he did all of that, that was all  
23 an indicator that Mr. Hopkins is not only going through serious  
24 injuries and going through recovery and working hard, it shows  
25 that Mr. Hopkins is honest.

1 Everything that they're trying to do to tell you he's lying  
2 by pointing out an inconsistency in the record speaks directly  
3 to the veracity of the record. Because if Mr. Hopkins was  
4 trying to trump all this up, the last thing he's going to do is  
5 acknowledge how much better he's doing. The last thing he's  
6 going to do is keep working and keep going. He's going to give  
7 up. He's going to give up right away.

8 But I also want to point out the arrogance of the position  
9 itself. You have Ms. Gordon, who has never met him. You have  
10 Mr. Harris who only met him after the case was filed to drag him  
11 into a deposition. You have Mr. Hight and Dr. Kutsy, who have  
12 never met him, and they're making a credibility call on a man  
13 they've never met that contradicts not just his family and  
14 friends, but treating doctors that have been working with him  
15 for years and that work with patients like this, and it's their  
16 job to help patients like this. And because it's a brain  
17 injury, so much of their job relies on the narrative and the  
18 historical record that the patient delivers.

19 And these doctors all believed him, and they didn't just  
20 believe him. They believed in him, so much so that two years  
21 later, having not seen Mr. Hopkins in that whole time, having  
22 seen other patients, living out their lives in their clinics,  
23 doing what they to do help people, they came to court, and they  
24 showed up on Zoom, and they told you everything that Mr. Hopkins  
25 did for two years to get better and that they witnessed it and

1 that it was all consistent with everything they did.

2 And now for Mr. Harris to come in in the same context and  
3 have the gall to suggest that Mr. Hopkins was anything but  
4 honest, well, that's just Integon doing more of the same.

5 And it was their playbook from the beginning. From the day  
6 they got the demand letter, that was a plot to ensure that  
7 Mr. Hopkins didn't know what they were truly doing, didn't know  
8 that they were trying to purposefully get a record that they  
9 could hide if they didn't like, that all of his statements about  
10 what he was going through, his medical records, everything else,  
11 that all of that wasn't being measured in terms of how can we  
12 make sure that he's being fairly compensated. It was being  
13 measured in terms of, "Well, what's a strength for us? What's a  
14 weakness for us?" That's how Integon was viewing this.

15 Does that sound like equal consideration? Does that sound  
16 like they're really putting their interest on the same level as  
17 Mr. Hopkins? Or does it sound like they're looking out for  
18 their own at every step?

19 And, finally, in response to the subtle but, really,  
20 indisputable contention that Integon is calling him a liar,  
21 please take a look, when you have a chance, at Jury Instruction  
22 No. 33.

23 That's the jury instruction that says Mr. Hopkins had a  
24 duty of good faith towards Integon. And Mr. Hopkins complied  
25 with that duty. That means he didn't commit insurance fraud.

1 That means he didn't lie to his insurance company. That means  
2 he didn't try to hold some records back. And that means -- and  
3 it's undisputed. It's in your jury instructions, and it was  
4 agreed to by Integon -- that Mr. Hopkins complied with every  
5 obligation he had in this case. And any suggestion or innuendo  
6 otherwise is not part of this case. It's trying to print out a  
7 prejudice that has no place in this courtroom.

8 There was some discussion in closing statement about  
9 Dr. Taylor being surprised by the September 2018 report -- I'm  
10 sorry -- Mary Gordon being surprised by Dr. Taylor's 2018  
11 September report where she said he's reached maximum medical  
12 improvement.

13 This is new. The notion that Mary Gordon didn't know when  
14 she was evaluating the claim that Dr. Taylor said that he had  
15 reached maximum medical improvement, that's brand new. Think  
16 about it for a second.

17 I asked Mary Gordon on cross-examination, I said, "You  
18 didn't think you had to speak with Dr. Taylor because you  
19 already knew all of Dr. Taylor's opinions, right?"

20 She said, Yeah." That's why she didn't reach out to  
21 Dr. Taylor.

22 And what did Dr. Kutsy say about Dr. Taylor? Remember,  
23 Mr. Harris made big deal that Dr. Kutsy hadn't yet seen the  
24 September of 2018 report. But Dr. Kutsy said it was obvious,  
25 from his review of the records, that Dr. Taylor had said that he



1 had plateaued, that it was permanent, and it wasn't going to get  
2 any better.

3 He said he didn't just have to see it from her. He'd seen  
4 it in all of Mr. Hopkins' records that he had gone in day after  
5 day after day with the same symptoms. And for Dr. Kutsy, it's,  
6 like, that tells me he's not going to get any better.

7 It's also true that if you look in the claim notes, you're  
8 going to see a note, in November, from Ms. Gordon, where she  
9 knows that there was this evaluation done in September 2018 and  
10 makes no effort to ask for it. The reason she made no effort to  
11 ask for it is because --

12 MR. HARRIS: Your Honor, this document is not in the  
13 record. This was removed --

14 MR. GAHAN: I'd ask the jury to refer to the evidence.

15 MR. HARRIS: This was removed from the evidence at  
16 plaintiff's suggestion yesterday, Your Honor. This document is  
17 not in the record.

18 MR. GAHAN: I'd ask the jury to rely on the evidence,  
19 and if that's not in there, we can get it in there because it  
20 certainly should be in there.

21 The reality is --

22 THE COURT: Mr. Gahan, you need to identify for me  
23 exactly what exhibit you're referring to.

24 MR. HARRIS: Page 57, Exhibit 200, Your Honor. We  
25 removed it last night, when we were going over the final

1 exhibits, at the plaintiff's request.

2 THE COURT: All right. Counsel, we'll sort that out  
3 after we conclude the argument.

4 Mr. Gahan, go ahead.

5 MR. GAHAN: Thank you.

6 The point is that Ms. Gordon knew that Dr. Taylor was  
7 saying the injury was permanent. There was no question that she  
8 knew that.

9 She wasn't contesting that Dr. Taylor said the injury was  
10 permanent. She was contesting whether or not she believed that  
11 it was permanent, because, remember, if Mary Gordon had any  
12 question about permanency, there was a place to get that answer.  
13 If she really had some confusion about what Dr. Taylor was  
14 saying, she had, in her ability, the opportunity to ask  
15 Dr. Taylor. She could have done that.

16 And Mr. Harris has said, repeatedly, "Well, you've heard  
17 testimony that they don't usually do that." Well, do you  
18 remember when Mr. Hight said that they do do that? When  
19 insurance companies do do that is when there's some confusion,  
20 when they need some clarification.

21 So what is it that Ms. Gordon needs right now? Well, she's  
22 saying that she doesn't believe in permanency, even though she  
23 knows, and it's in the record, that Dr. Taylor has said that  
24 it's permanent.

25 She has options. She can ask for clarification from

1 Dr. Taylor. She can seek it out through someone else to do a  
2 records review or an in-person meeting. She can take any of  
3 these steps to answer that question. But don't pretend that she  
4 didn't know that Dr. Taylor was saying it was permanent.

5 I also want to speak to this notion that Ms. Rosato and  
6 Ms. Gordon had just come up with plan together and that they  
7 were working hand in hand all the way up through until the very  
8 end, when the lawsuit was filed. I want to urge you to look at  
9 the claim file in this respect.

10 On April 24th, 2018 -- that's Exhibit 200 at 78 -- that's  
11 where Mary Gordon made the offer of \$17,430 (sic). And she said  
12 she did it because she didn't believe in permanency, she didn't  
13 believe the vertigo was new, based on that single record, and  
14 because she believed that he was able to do all the activities  
15 that he previously enjoyed.

16 Now, on May 1st, 2018, the claim file says that Ann Rosato  
17 sent an email from Mr. Hopkins explaining the September record  
18 that had Ms. Gordon so concerned. And you'll see -- and  
19 Exhibit 2, page 42, which I'd urge you to look at, you're going  
20 to see that Ms. Rosato says, "We renew our demand for limits if  
21 you are going to rely on a single record to deny this demand."

22 So this concept that Ms. Rosato is saying, "Yeah, this is  
23 great, let's keep going this way, we're hand in hand, we're  
24 working together," that's just false.

25 But Ms. Rosato is an attorney. She knows certain things.

1 She knows that Integon holds all the cards, right? She knows  
2 that Integon has the ability and opportunity to investigate the  
3 claim in any way that they want. And she knows that what  
4 Mr. Hopkins deserves in this case are the policy limits that he  
5 paid for. And that's all she can do is provide information and  
6 ask for those limits.

7 And if Ms. Gordon tells her, "Well, look, we want to do a  
8 records demand to clear this up," Ms. Rosato can't say, "No, you  
9 can't do a records demand, a records evaluation, a records  
10 review." Ms. Rosato doesn't have any standing for that. All  
11 she can do is maybe say, "Well, if you're going to do a records  
12 review, will you, at least, use the right expert? Can you not  
13 be looking for an ENT doctor? Can you not be looking for a  
14 neuropsychologist? Can you, at least, find the expert that  
15 matches Dr. Taylor's specialty?"

16 And, by the way, the concept that Mary Gordon needed  
17 Ann Rosato to tell her that you didn't actually need a  
18 neurologist to look at records from a neurologist, why is that?  
19 Because Ms. Gordon didn't invest the time and the thoughtfulness  
20 that are required to evaluate a claim honestly. Instead, she  
21 punted, she punted to a self-interested defense attorney to find  
22 her the right expert.

23 And Mr. Harris kept describing this expert as "very  
24 qualified," and she was trying to find someone in that field.  
25 Is that what you saw in the records, that she was trying to find

1 someone in that field? What you see in the records is her  
2 trying to find someone that will agree to just do a records  
3 review but not actually meet him in person. That was the  
4 qualification, and that's why it took so long, because that's  
5 really hard to find, somebody in any of these specialties that's  
6 willing to do that, and that's why she couldn't find him.

7 Again to this concept that they were working hand in hand.  
8 At one point, he said Ms. Gordon had nothing to hide. Have any  
9 of us been listening to the evidence in this case? She had  
10 nothing to hide?

11 Well, when she was talking to Ann about needing a records  
12 review, Mary Gordon never mentioned, "By the way, the reason I  
13 want this records review isn't really to clear up the September  
14 2017 record that I said I was confused about. No, what I'm  
15 trying to do is get an evaluation by a doctor, handpicked by an  
16 insurance defense attorney, in a way that I can hide the results  
17 from you if they're not favorable to us." We know that. It's  
18 in the same record where she actually spoke with Ms. Rosato.  
19 Don't tell me she had nothing to hide. Do you think if  
20 Ms. Rosato had known that that was the approach that was being  
21 used by Integon, at that point she wouldn't have objected? But  
22 all she hears is, "Look, we have a confusion about a record and  
23 we want it cleared up, so we're going to reach out to a doctor  
24 and ask him to do a records review to clear up this confusion."  
25 Ann says, "Okay, you do what you have to do, but if you're just

1 going to come back and offer me something close to 17 grand,  
2 don't even make me an offer until you're done." That's just  
3 looking out for her client.

4 You also heard argument about the September 1st, 2017,  
5 record, and Mr. Harris, sort of, drew a line. Right? He's  
6 saying there's no record that anything was wrong or inaccurate,  
7 nothing in terms of evidence to dispute it. And there's -- the  
8 truth is, what we had was the testimony of the physical  
9 therapist, at that same clinic, that saw Mr. Hopkins 31 out of  
10 33 times. And she said, "No, no, that record is accurate. You  
11 just have to understand it in its whole context." That was her  
12 testimony. Don't say there was no testimony about that record  
13 and no testimony explaining that record.

14 And read that record again. It doesn't say, "I had this  
15 vertigo all the way up until April 23rd, 2016, and then I just  
16 kept having it." It said that it wasn't unusual for him because  
17 he had it before. And that's uncontested that Mr. Hopkins had  
18 vertigo from the 2011 collision. That's uncontested. But he  
19 got better from it.

20 There's no reason to disregard Dr. Eaton's testimony. And  
21 Dr. Eaton was clear. If you actually look at his records in  
22 their context, all of this makes sense to you. And she also  
23 said, "He's been telling me that same thing the whole time." He  
24 never said this was new, though. It was new.

25 And think about it logically, right? You have no records

1 and no treatment for three and a half years, and then you have  
2 records and treatment from the day of the collision. That  
3 should tell you something about what he's getting treatment for.  
4 It should tell you that he didn't have those same symptoms  
5 before, or he would have been going to get treatment for those  
6 symptoms before.

7 Mr. Harris also kept saying that we entered evidence or  
8 argument that Mr. Hopkins was back to normal after the 2011  
9 collision. That's not true. We never said he was back to  
10 normal. I wish he was back to normal.

11 Mr. Hopkins took the stand and said, "I got everything back  
12 that I could."

13 Dr. Taylor took the stand and said he has a visible hole in  
14 his brain where stuff's missing, and you can't get that back.

15 Mr. Hopkins said he can't -- after the 2011 collision, he  
16 couldn't drive and have music on at the same time.

17 He, clearly, wasn't back to normal, but he had back  
18 everything that he could get back, and that's what makes this  
19 injury so devastating is because he got to a point where he  
20 could actually hoist the sail again. He could actually engage  
21 in those same activities that gave him joy and defined his life,  
22 and those were taken away. That doesn't mean that when he takes  
23 the stand, he's suddenly not going to have a brain injury  
24 anymore and he's going to be able to navigate his own records  
25 and defend them when a defense attorney is asking him questions.

1 That doesn't mean that he's going to be the same Mr. Hopkins as  
2 he was in 2010. But it does mean that he had something taken  
3 away from him, and this trial is about trying to get that back.

4 I want to talk about a few things that happened during this  
5 trial that are a little more subtle, a little bit of a  
6 suggestiveness or innuendo that was occurring during this trial,  
7 because I think it's important to see how far Integon is willing  
8 to go.

9 The first is, do you remember when Mr. Harris, in his  
10 opening, said that Dr. Taylor uses the word "residual," and when  
11 she uses the word "residual," she means that Mr. Hopkins had  
12 that back in 20- -- it's an injury that has been sustained since  
13 2011. Do you remember when he said that in opening, which is a  
14 promise to you about what the evidence is going to show?

15 And then Dr. Taylor took the stand and said, "I didn't mean  
16 'residual' meant it lasted all the way to 2011. I meant  
17 'residual' means he's still suffering post-concussive symptoms  
18 from the April 2016 collision."

19 Do you also remember on cross-examination of Dr. Taylor  
20 when Mr. Harris said, "And you got these exhibits, Dr. Taylor,  
21 and you got them from plaintiff's counsel, and you didn't look  
22 at them until plaintiff's counsel gave them to you," and  
23 Mr. Wampold had to put the brakes on and say, "Hold on a second.  
24 Objection."

25 Those exhibits were mailed to Dr. Taylor at the behest of



1 defense counsel, at the behest of the court because we're on  
2 Zoom and we have to send the exhibits. Why was he trying to  
3 make that look untoward or make it look like we're doing  
4 something wrong?

5 Do you remember when Mr. Harris pulled out the medical  
6 waiver and started reading to it -- reading from it and acting  
7 like there was some medical waiver that prevented the insurance  
8 company from reaching out to the doctors?

9 Then you had to be instructed by the court that that  
10 medical waiver doesn't apply here, it doesn't apply to these  
11 facts.

12 Then Mr. Hight had to admit, "Well, yeah, because this is a  
13 UIM policy, they certainly had the right to speak to the  
14 doctors." Why is he trying to stir this up and create these  
15 insinuations and presumptions that are based on nothing? It's  
16 because he knows the evidence in this case is overwhelming.

17 One more you should look at is the policy, Exhibit 3-3 and  
18 3-5. I want you to see that the standard for the PIP and the  
19 standard for the UIM is exactly the same, meaning that they had  
20 to find the injuries were reasonable and connected to the  
21 collision before they paid, and there's nothing, despite what  
22 Mr. Harris said in opening, that changes the standard for PIP to  
23 UIM.

24 The only difference for Integon here was that, for the PIP,  
25 it was only \$10,000 that was on the line. When it came to the

1 \$250,000, suddenly their standard took a sharp turn, and they  
2 acted very differently towards exactly the same injuries.

3 And, finally, I want to talk to you about the fact that  
4 Integon uses its own adjusters and uses its own experts and uses  
5 its own doctors and uses its own lawyers to recommend its own  
6 doctors.

7 What have they done here? They've created a citadel.  
8 They've created this self-contained little world where, if  
9 you're hurt and you go to your insurance company, they say,  
10 "Well, we're going to evaluate the value of your claim, but you  
11 know what? We're not going to look outside of our walls to  
12 determine the value. We're going to use our own experience and  
13 the experience of our supervisors, we're not going to look at  
14 focus groups, we're not going to look at jury verdicts, we're  
15 not going to look at anything else. We're going to use our own  
16 experience, and then if our own experience tells us the value of  
17 the claim, we're going to make an offer. And if we value it at  
18 \$84,000, we're going to make an offer at \$17,000 just to see if  
19 you'll bite. And if you don't, we're going to go to our own  
20 defense attorney, and we're going to ask our own defense  
21 attorney to recommend somebody who will look at this case in the  
22 way that we want them to. And then if that doesn't work and you  
23 still don't bite, then we're going to hire our own expert, who  
24 is going to come in and say that all you have to do is try  
25 hard."

1           Think about how self-contained that is. It's a citadel  
2       that's impossible to penetrate. It's a citadel that you can't  
3       crash through. But thank God for you. Thank God for these jury  
4       instructions and these various claims, because they allow you to  
5       breach the walls, and they allow you to say, "You know what?  
6       You're not allowed to create this self-serving little universe,  
7       where you just rely on yourselves to bolster yourselves and  
8       create this world that nobody else can get in."

9           You have to apply the standards that are in the law, and  
10      when you fail to do that, you're going to be held accountable,  
11      and that's exactly what we're asking you to do here.

12           Thank you.

13           THE COURT: Thank you, counsel.

14           Ladies and gentlemen, the case is now ready to be submitted  
15      to you for your deliberations. So you have your jury  
16      instructions. You have a verdict form that is capable of being  
17      filled out electronically. You'll have access to the exhibits  
18      that have been admitted in the case.

19           I'm going to ask that you continue to deliberate until you  
20      arrive on a verdict. If you haven't done so by the end of  
21      today, I'll be asking you to come back tomorrow morning at the  
22      same time, at nine o'clock, and continue your deliberations.

23           And, remember, it's entirely up to you how long you  
24      deliberate. That is up to each jury in each circumstances. The  
25      court does not tell you how long you should spend on

1 deliberations. That's your choice.

2 So are there any questions about the instructions I've  
3 given you so far about how you're going to conduct yourself for  
4 the rest of the day?

5 All right. Then you may be excused to the jury room.

6 THE FOLLOWING PROCEEDINGS WERE HELD  
7 OUTSIDE THE PRESENCE OF THE JURY:

8 THE COURT: All right. All our jurors in are in the  
9 jury room?

10 THE CLERK: Yes, Your Honor.

11 THE COURT: Okay. Yesterday, as I understand it, in  
12 front of the courtroom deputy, you each certified that all of  
13 the exhibits that were needed were in the Box.

14 And we had a discussion -- an objection over Exhibit 200, I  
15 believe it was page 58; is that correct, Mr. Harris?

16 MR. HARRIS: Yes. So it's Exhibit 200, and it's  
17 page 57.

18 THE COURT: Page 57. Okay.

19 MR. HARRIS: And it's not in the Box because we took  
20 it out yesterday at the insistence of the other side, of  
21 plaintiff's counsel, and that is the record that was being  
22 referenced in closing.

23 MR. GAHAN: That's not correct, Your Honor. It's  
24 Plaintiff's Exhibit 1-11.

25 THE COURT: Okay. Well, that's a big difference.

1 That's about 200 exhibits apart. Let me take a look at 1-11.

2 MR. HARRIS: Same page, page 57, they asked us to take  
3 out of ours.

4 MR. GAHAN: Sorry, counsel --

5 THE COURT: Mr. Gahan, I'm not following your number.

6 MR. GAHAN: If you look at Exhibit 1, page 11, look at  
7 the record from November 2018.

8 THE COURT: Yes, I'm seeing that, and it is exactly  
9 the same as 200.

10 MR. GAHAN: Okay.

11 THE COURT: Page 57.

12 MR. GAHAN: Right. So this concept that that's --  
13 that's a record that I agreed to have withdrawn, obviously was  
14 inaccurate.

15 I was relying on my exhibit. The record's in, and I would  
16 ask the court to inform the jury of this exhibit number, because  
17 he created this false impression that we were relying on an  
18 exhibit that's not in evidence. It clearly is.

19 MR. HARRIS: We were asked yesterday, Your Honor, by  
20 Mr. Gahan's office to remove this page from the exhibit. Why  
21 would it be removed from one but not the other? We thought it  
22 was not going to be in. That was our agreement. That was what  
23 we traded emails about last night. We have the email from 6:43  
24 last night from Mr. Gahan's office.

25 THE COURT: Well, look -- Mr. Cogswell?

1 THE CLERK: Yes, Your Honor?

2 THE COURT: Can you take a look at the Box?

3 THE CLERK: I have it open, Your Honor.

4 THE COURT: Is Exhibit 1, page 11 in there?

5 THE CLERK: It is page 57 of 365?

6 THE COURT: Yes, page 57 of page 365. It's also  
7 Exhibit 1-11. The problem is we've got three different numbers  
8 on these.

9 Is that exhibit in, and was that exhibit certified that it  
10 would be there?

11 THE CLERK: Let me check the email. Just one moment.

12 MR. HARRIS: I've got the email from 6:43 last night,  
13 and Mr. Cogswell is copied on it. It indicates that page 57 of  
14 Exhibit 200 should be deleted and that these exhibits of what  
15 should and should not be admitted -- so that should have been  
16 removed from Exhibit 1.

17 MR. COGSWELL: That is the email I see, Your Honor.

18 MR. GAHAN: Your Honor, there was no agreement to  
19 remove 1-11. There never was. It is true that there were some  
20 Integon records that were duplicative, there were others that  
21 didn't contain the right redactions, and we sent an email -- I  
22 guess the paralegal sent an email with the understanding that  
23 Mr. Harris and I had received -- had a discussion a while back  
24 about making his claim file smaller, but I've always had  
25 Exhibit 1-11 in. It's always been part of Exhibit 1. We've

1 used Exhibit 1 throughout the trial. And just because one  
2 particular page might be omitted from one exhibit doesn't mean  
3 it's automatically removed from all other exhibits.

4 Mr. Harris and I have tried to go through and reduce  
5 duplicative exhibits as much as we can. I don't see why I would  
6 have -- there was no understanding that 1-11 was ever going to  
7 be removed, and I certified that Exhibit 1 was accurate, and so  
8 did Mr. Harris. The jury now is under the false impression that  
9 we were trying to hide something or that we were relying on an  
10 exhibit that's not in evidence, and that's just not true.

11 If Mr. Harris wants to put page 57 back in, I have no  
12 objection to that.

13 THE COURT: Mr. Harris, I take it this was taken out  
14 at what you believe was Mr. Gahan's request?

15 MR. HARRIS: At the request of his paralegal, yes,  
16 Your Honor.

17 THE COURT: So it doesn't hurt you if it's in? It's  
18 always been in?

19 MR. HARRIS: It was in, Your Honor, but we were asked  
20 to certify this last night. Why would we take it out of one  
21 version and not the other? They asked us to take it out of our  
22 version, and we did.

23 THE COURT: Well, look. It's been in the entire time.  
24 I don't know who's certifying, but the lawyers are the ones who  
25 are certifying. The paralegals aren't doing this.

1 But at the time you told Mr. Cogswell that it was all set,  
2 it, apparently, was at least in there once. It's going to stay  
3 in there once, and that's all we're going to do about it.

4 MR. HARRIS: Okay.

5 MR. GAHAN: Your Honor, would you instruct the jury  
6 that Exhibit 1-11 is, indeed, in evidence?

7 THE COURT: No, because you, basically, made a point  
8 that if it's in there, it's in there, and I said I would sort it  
9 out. If they look at either one of those pages, it's there.

10 MR. GAHAN: All right. Sounds good.

11 THE COURT: All right. So a couple of things.

12 Is Mr. Wampold still with us?

13 MR. WAMPOLD: I am, Your Honor.

14 THE COURT: Good. Mr. Wampold, I didn't think you'd  
15 already gone out celebrating.

16 MR. WAMPOLD: Not yet.

17 THE COURT: Not yet? All right.

18 I usually -- as you know, in federal court, we do not allow  
19 the lawyers to speak with the jurors afterwards. And unlike  
20 many judges, I do not speak with jurors, except to thank them  
21 and receive any comments about the process that they might have,  
22 particularly in a case where there still is more work for me to  
23 do, and in this case we've got the Consumer Protection Act  
24 claim, we've got attorney's fees, so this is not a jury that I  
25 would normally go chat it up with, and I don't do that anyway.



1 But because this is a Zoom case, I'm wondering if you would  
2 be willing to participate with me in talking with the jurors  
3 about the process, the mechanics, how they felt about the  
4 techniques, the instructions that they got. Judge Zilly did  
5 that on his case, and I have the transcript of what he did. It  
6 would be my intent to have the reporter there while we did it,  
7 and we can go over those kinds of issues, for the sole purpose  
8 of making sure that each time we do one of these trials, we can  
9 build upon our experience.

10 Is that acceptable to you?

11 MR. WAMPOLD: Yes, I think that would be great.

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: All right. Then, first of all, I want to  
14 thank you for being game. I told you at the beginning I hadn't  
15 been this nervous about a trial since 32 years ago when I did my  
16 first one, but I think we all made it through, and, from my  
17 perspective, surprisingly well.

18 I know that we have several lawyers that I admitted and  
19 that have been watching, and before we say goodnight to one  
20 another, I was wondering if there's anything you would like to  
21 say to them about how they might prepare or don't do this -- or  
22 whatever you want to say.

23 MR. WAMPOLD: I guess, from my perspective, you know,  
24 I want to thank you guys, the federal court, and you, in  
25 particular, Judge Pechman, for making this happen, because I

1 thought it worked remarkably well.

2 I was surprised how similar to an in-person trial it all  
3 went, and I don't think it's, actually, very different from a  
4 real trial. So I thought it all went surprisingly well and  
5 smoothly.

6 And there were way less technical issues than I expected.  
7 We really didn't have that much downtime. We have more downtime  
8 with jurors who are late on a bus than we did with technical  
9 issues.

10 THE COURT: And amazingly, they all showed up on time  
11 after lunch and at each break.

12 Mr. Harris, what did you think?

13 MR. HARRIS: I agree with Mr. Wampold. I'll be candid  
14 with you, Judge. I had some very serious reservations when you  
15 told us in late August. I got off that call and said, "Oh, boy,  
16 this can be kind of messy."

17 I read stories online about other Zoom trials, one in  
18 California, in particular, and I was very concerned. But I have  
19 to give credit to both sides and to your staff, because I think  
20 we were able to pull it off, with cooperation on everybody's  
21 part and a real commitment to making this work. If we had not  
22 bought into this, I don't think we could have pulled this off in  
23 this manner.

24 THE COURT: Well, I think I told you there are some  
25 things that are a bit different for me. One, I'm really sick of

1 looking at myself in the face for seven days in a row. And I  
2 know I could black myself out, but that doesn't help you when  
3 you're trying to read me.

4 Did you feel like you were connected with the jurors?

5 MR. WAMPOLD: I would say not as much as a real trial,  
6 but there was some.

7 THE COURT: Okay. And did you think that they were  
8 forthcoming in their voir dire?

9 MR. HARRIS: Not as much as normal.

10 MR. WAMPOLD: I just thought they weren't as talkative  
11 as normal. It was harder to get a conversation going than,  
12 probably, in person.

13 THE COURT: Normally, I have a whole shtick that I do  
14 with them with the artwork in the courthouse. I tried to give  
15 them some prompts for them to talk. We'll find out later if any  
16 of that worked, but I might increase that to get them talking a  
17 little more along the way.

18 All right. Counsel, as you heard, they're the ones that  
19 are going to decide, sometime between 3:30 and 4:00, whether  
20 they're going to stop deliberating, if they haven't reached a  
21 verdict.

22 Would you please make sure you stay in place so that  
23 Mr. Cogswell can get in touch with you in case we have a  
24 question or in case we have a verdict? And if they don't reach  
25 a verdict, then Mr. Cogswell will send you an email saying

1 everybody has gone home and they'll be back tomorrow at nine  
2 o'clock to continue. And we'll go on in that process until we  
3 get a result.

4 Thank you so much for your arguments, and, really, thank  
5 you so much for being willing to try this out. There is going  
6 to be an article written by the Administrative Office of the  
7 Courts about us, and a reporter might give you a call to talk  
8 with you. I told them that I would let them know when we were  
9 done. And so that story is going to run. I don't know when.

10 And I really -- I really enjoyed your advocacy on all  
11 sides. For a judge to watch good lawyers work is like sitting  
12 back and eating bonbons. So, apparently, I'm food obsessed.  
13 Mr. Gahan liked my strawberries in the dark comment, and now I'm  
14 on to bonbons. It was a good experience.

15 I have another Zoom meeting at two o'clock, so I'll say  
16 good-bye, and we'll wait on our jurors for the verdict.

17 MR. WAMPOLD: Thank you, Your Honor.

18 MR. HARRIS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Court adjourned at 2:00 p.m.)

21 (The jury was released at 4:00 p.m.)  
22  
23  
24  
25

## C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 11th day of December 2020.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR  
Official Court Reporter